

## **EXHIBIT H (PART 1)**

Page 1

Page 2

[1]  
[2] UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
[3]  
[4] MICHAEL STEPSKI, KIRSTEN STEPSKI,  
Wife, GEAL RODERICK and BENJAMIN  
SCHOBER,  
[5] No.  
Plaintiffs, 06 CV 01695  
[6] (CM)  
- vs -  
[7]  
[8] THE M/V NORASIA ALYA, her owners,  
operators, etc., and MS "ALENA"  
SCHIFFAHRTSGESELLSCHAFT mbH & CO.,  
[9] KG, PETER DOEHLE SCHIFFAHRTS-KG,  
[10] Defendants.  
[11]  
[12]  
[13]  
[14] Deposition of MACIEJ KOWALEWSKI,  
[15] taken by Plaintiffs, pursuant to Notice, at the  
[16] offices of Blank Rome, LLP, The Chrysler Building  
[17] 405 Lexington Avenue, New York, New York, on  
[18] Wednesday, September, 12, 2007 commencing at 9:34  
[19] a.m., before Linda D. Danekczyk, a Certified  
[20] Shorthand Reporter, Registered Professional  
[21] Reporter and a Notary Public of the State of New  
[22] York.  
[23]  
[24]  
[25]

[1]  
[2] Appearances.  
[3]  
THOMAS H. HEALEY, ESQ.  
[4] Attorneys for Plaintiffs  
17 Battery Place, Suite 605  
[5] New York, New York 10004  
[6]  
[7]  
BLANK ROME, LLP  
[8] Attorneys for Defendants  
The Chrysler Building  
[9] 405 Lexington Avenue  
New York, New York 10174-0208  
[10]  
BY: ALAN M. WEIGEL, ESQ.  
[11]  
[12]  
[13] ALSO PRESENT:  
[14] JAKUB ZAIC, Interpreter,  
Erickson Translation  
[15]  
CONSTANZE SCHNEIDER  
[16]  
TERRENCE GARGAN  
[17]  
[18]  
[19]  
[20]  
[21]  
[22]  
[23]  
[24]  
[25]

Page 3

[1]  
[2]  
[3] IT IS HEREBY STIPULATED AND  
[4] AGREED that the filing and sealing of  
[5] the within deposition be, and the  
[6] same are hereby waived;  
[7] IT IS FURTHER STIPULATED AND  
[8] AGREED that all objections, except as  
[9] to the form of the question, be and  
[10] the same are hereby reserved to the  
[11] time of the trial;  
[12] IT IS FURTHER STIPULATED AND  
[13] AGREED that the within deposition may  
[14] be sworn to before any Notary Public  
[15] with the same force and effect as if  
[16] sworn to before a Judge of this  
[17] Court,  
[18] IT IS FURTHER STIPULATED that  
[19] the transcript is to be certified by  
[20] the reporter.  
[21]  
[22]  
[23]  
[24]  
[25]

MACIEJ KOWALEWSKI  
September 12, 2007

MICHAEL STEPSKI v.  
THE M/V NORASIA ALYA

Page 4

[1] JAKUB ZAIC, called as  
[2] the official interpreter in this matter, was  
[3] duly sworn by a Notary Public of the State of  
[4] New York, (Linda D. Danelczyk), to translate  
[5] accurately and faithfully the questions  
[6] propounded to the witness from English into  
[7] Polish and the answers given by the witness  
[8] from Polish into English.

[9] MACIEJ KOWALEWSKI, having  
[10] been first duly sworn by a Notary Public of  
[11] the State of New York, (Linda D. Danelczyk),  
[12] according to law, was examined and testified  
[13] as follows:

**EXAMINATION  
BY MR. HEALEY:**

[14] Q: Captain Kowalewski, I just  
[15] introduced myself. My name is Tom Healey and I am  
[16] representing the people who were on the fishing  
[17] boat the AVA CLAIRE, and I'm going to question you  
[18] about circumstances around that incidents.

[19] Do you understand?

[20] A: Yes.

[21] Q: Now, we have an interpreter here,

Page 5

[1] *M. Kowalewski*  
[2] but as I understand it, for one thing, you speak  
[3] good English; do you not?  
[4] A: Yes.  
[5] Q: You understand so far when I'm  
[6] speaking to you; do you not?  
[7] A: I understand.  
[8] Q: And I think we've all told you, if  
[9] at any point I'm talking too fast or doing  
[10] something you don't understand it, call me on it.  
[11] I want to make sure you understand my questions,  
[12] right? And if you don't, tell me. All right?

[13] A: Okay.

[14] Q: Now, back in May of 2004, were you  
[15] the master of a container vessel called the  
[16] NORASIA ALYA; is that correct?

[17] A: Yes.

[18] Q: And May 22nd, 2004, did you receive  
[19] a message concerning an activated EPIRB?

[20] A: Yes.

[21] Q: What's an EPIRB?

[22] A: Electronic position indicator radio  
[23] beacon.

[24] Q: Was it your understanding at that  
[25] time that that can be a signal from a ship in

Page 6

[1] *M. Kowalewski*

[2] distress?

[3] A: Yes.

[4] Q: All right.

[5] How did you get this information  
[6] that there was an EPIRB activated?

[7] A: By VHF.

[8] Q: What's that, radio?

[9] A: Channel 16.

[10] Q: Channel 16.

[11] Did you hear it yourself?

[12] A: Yes.

[13] Q: Did you make a note of the contents  
[14] of that message?

[15] A: Yes.

[16] Q: And where is the note that you made?

[17] A: On the scratch paper.

[18] Q: And do you still have the scratch  
[19] paper?

[20] A: I don't have it.

[21] Q: Is there any record around, Captain,  
[22] of the contents of the message that you received  
[23] on May 22nd?

[24] A: I don't know.

[25] Q: And did you review an investigation

Page 7

[1] *M. Kowalewski*

[2] made after May 22nd of this incident by the United  
[3] States Coast Guard?

[4] A: I don't understand your question.

[5] Q: Do you know that the Coast Guard  
[6] investigated — let me withdraw it.

[7] The Coast Guard came aboard the  
[8] NORASIA ALYA on May 23rd; did they not?

[9] A: They come.

[10] Q: They were making an investigation;  
[11] were they not?

[12] A: They come.

[13] Q: Did they inquire into the  
[14] possibility between a collision between the  
[15] NORASIA ALYA and a fishing vessel?

[16] A: No.

[17] Q: What did they inquire about?

[18] A: They inquire operating information  
[19] and all the records.

[20] Q: Did they ask about — let me  
[21] withdraw that.

[22] Did the Coast Guard and you and  
[23] lawyers representing your underwriters get in the  
[24] boat and go around the NORASIA ALYA and inspect  
[25] it?

Page 8

*M. Kowalewski*

- (1) *M. Kowalewski*  
 (2) A: I inspected the boat together with  
 (3) them.  
 (4) Q: Why?  
 (5) A: Because they requested me do so.  
 (6) Q: Did they say anything about a  
 (7) possible collision? The Coast Guard?  
 (8) A: Actually, it was issued several  
 (9) statements, but the investigators they recollect  
 (10) the facts. They were no making any judgment of  
 (11) the situation.  
 (12) Q: I didn't ask you that. I said  
 (13) simply:  
 (14) Did they make some investigation,  
 (15) inquiries into the facts of a possible collision?  
 (16) A: I don't understand your question.  
 (17) Q: All right.  
 (18) Well, what did the Coast Guard ask  
 (19) you about?  
 (20) A: Coast Guard asked me about the ECDIS  
 (21) printout.  
 (22) Q: What does that stand for?  
 (23) A: That is the electronic chart. In  
 (24) the past, every vessel was equip only in the paper  
 (25) chart. When the IT technology developed on the

Page 9

*M. Kowalewski*

- (1) *M. Kowalewski*  
 (2) ships, they installed computers and they created  
 (3) software where the near future will replace the  
 (4) paper chart. And we have one of a such things on  
 (5) board.  
 (6) Q: You have one of those on board the  
 (7) NORASIA ALYA?  
 (8) A: Correct.  
 (9) Q: So it made a record of where the  
 (10) ship was at various times during its voyage?  
 (11) A: Yes.  
 (12) Q: All right.  
 (13) And the Coast Guard asked you to  
 (14) produce that?  
 (15) A: Yes.  
 (16) Q: Now, let me go back to what I said  
 (17) to you at first.  
 (18) At any time since the Coast Guard  
 (19) came a board on May 23rd up to now, had you  
 (20) reviewed any records, any statements, that the  
 (21) Coast Guard produced?  
 (22) A: I don't understand your question.  
 (23) Q: All right. Let me ask you this:  
 (24) Did you ever see the following: A  
 (25) record from the Coast Guard that said, on

Page 10

*M. Kowalewski*

- (1) *M. Kowalewski*  
 (2) May 22nd, 2004, at 1318 — let me interrupt.  
 (3) What's 1318 in ordinary time,  
 (4) Captain? 1318 is sea time. Is that 1:18 in  
 (5) ordinary time?  
 (6) A: Yes.  
 (7) Q: In the afternoon?  
 (8) A: Yes.  
 (9) Q: 1:18 p.m., all right.  
 (10) Now, the Coast Guard as stated, this  
 (11) is the message they sent. Subject — and listen  
 (12) to me, I want to know if — if you remember  
 (13) receiving this.  
 (14) MR. WIEGEL: What's the date  
 (15) of the message?  
 (16) MR. HEALEY: May 22nd, 2004 at  
 (17) 1 p.m. in the afternoon.  
 (18) MR. WIEGEL: Okay.  
 (19) Q: Subject — and listen to me, and if  
 (20) you want me to give it to you to read, I will.  
 (21) "Urgent marine" information  
 (22) broadcast. The following urgent marine  
 (23) information broadcast has been initiated, quote."  
 (24) Quote means now this is what they say they said:  
 (25) "The Coast Guard is receiving an emergent need

Page 11

*M. Kowalewski*

- (1) *M. Kowalewski*  
 (2) signal from a 406MHZ emergency position indicating  
 (3) radio beacon from the fishing vessel AVA CLAIRE."  
 (4) Do you remember that that was the  
 (5) message?  
 (6) A: I remember.  
 (7) Q: Okay.  
 (8) And it said, "In position 40-32.ON,"  
 (9) comma, and then — do you remember that the Coast  
 (10) Guard —  
 (11) A: Yes.  
 (12) Q: They gave you the coordinates?  
 (13) A: But I don't remember the  
 (14) coordinates.  
 (15) Q: I didn't ask you if you remembered,  
 (16) but I'm just saying they did give the coordinates  
 (17) in the message?  
 (18) A: I remember only that I received that  
 (19) message. But I don't remember the contents of the  
 (20) message because long time past already.  
 (21) Q: I understand that. All I'm saying  
 (22) is, you did make a note of it at the time on scrap  
 (23) paper?  
 (24) A: In the time I make a note on the  
 (25) scrap paper.

MACIEJ KOWALEWSKI  
September 12, 2007

MICHAEL STEPSKI v.  
THE M/V NORASIA ALYA

Page 12

*M. Kowalewski*

(1)  
(2) Q: All right.  
(3) And two days later on the 24th of  
(4) May when you were in Newport, did you not record  
(5) those coordinates in a statement you gave for the  
(6) Liberian government?  
(7) A: We received the day after —  
(8) Q: No, let me interrupt you —  
(9) MR. WIEGEL: Well, let him  
(10) finish the answer.  
(11) MR. HEALEY: He wasn't  
(12) answering.  
(13) Q: Now I'm moving on to when the ship  
(14) was down at Newport News on May 24th.  
(15) Is it correct that on May 24 at  
(16) Newport News you prepared a statement of facts?  
(17) A: Correct.  
(18) Q: Okay.  
(19) And in that statement of facts, all  
(20) right, you set forth again, you repeated again,  
(21) that you received on Channel 16 from the Coast  
(22) Guard this urgent message?  
(23) A: I have this. I have this. I know  
(24) the contents.  
(25) Q: You know what I'm taking about?

Page 13

*M. Kowalewski*

(1) A: Yes, of course I know.  
(2) Q: The point I'm making, in that  
(3) statement, you cited latitude and longitude  
(4) coordinates, correct?  
(5) A: Yes.  
(6) Q: All right.  
(7) Those latitude and longitude  
(8) coordinates had been given to you on that Coast  
(9) Guard message; is that correct?  
(10) A: Not only.  
(11) Q: What?  
(12) A: Not only that message. It was —  
(13) Q: Wait a minute, Captain, let me  
(14) suggest to you if you answer my question and then  
(15) you can say something. I'm saying to you:  
(16) The Coast Guard message that I have  
(17) referred to on May 22nd at 1:18 p.m., you said you  
(18) received it.  
(19) A: Yes.  
(20) Q: You said you remember an urgent  
(21) message.  
(22) A: Yes.  
(23) Q: You said you remember that it made  
(24) reference to an EPIRB signal.  
(25)

Page 14

*M. Kowalewski*

(1) A: Yes.  
(2) Q: And on that message, that — just  
(3) stick with that message — the Coast Guard gave  
(4) you the coordinates of the EPIRB; did they not?  
(5) A: Yes.  
(6) Q: So —  
(7) A: Well, actually, I don't remember the  
(8) coordinates. But it was a standard message, and  
(9) always in the standard messages those information  
(10) you are talking about they are included. So based  
(11) on my experience, I believe they were the  
(12) coordinates.  
(13) Q: All right. All right.  
(14) So what you're telling me is —  
(15) A: Because I don't remember the  
(16) contents of the message today. I remember only  
(17) that I received the message.  
(18) Q: Okay. All right. All right. You  
(19) said that several times. So just — just stick  
(20) with me now.  
(21) You just told me that it is standard  
(22) practice that that type of message, an urgent  
(23) message on EPIRB from the Coast Guard, will give  
(24) the coordinates; is that correct?  
(25)

Page 15

*M. Kowalewski*

(1) A: No, I don't agree with you what you  
(2) say. Because you said that —  
(3) Q: Okay. Why don't you agree?  
(4) A: Because you say that urgent message  
(5) from the Coast Guard on the EPIRB. EPIRB has  
(6) nothing to do with the Coast Guard.  
(7) Please be specific because I don't  
(8) understand.  
(9) Q: I want you to tell me that  
(10) because — look at the statement.  
(11) A: I remember the statement.  
(12) Q: Hold it a minute. Look at the  
(13) statement, Newport News, 25 May, you have in your  
(14) booklet there.  
(15) Do you have it?  
(16) A: Yes.  
(17) Q: Before we go on, tell me. You got a  
(18) binder book in front of you with a lot of stuff in  
(19) it. Is that your personal record?  
(20) A: Yes.  
(21) Q: All right.  
(22) And is this a vessel, a NORASIA ALYA  
(23) record, or is it your personal record?  
(24) A: It is my personal records regarding  
(25)



Page 16

*M. Kowalewski*

Page 18

*M. Kowalewski*

[1] the case, allegation of collision with the fishing  
[2] vessel AVA CLAIRE.  
[3] Q: So you prepared this yourself  
[4] independently of any ship's logbooks; is that  
[5] right?  
[6] A: Yes. I collected evidence.  
[7] Q: All right.  
[8] You collected evidence. Is that  
[9] correct?  
[10] A: Correct.  
[11] Q: Now, at the present time we're  
[12] talking about the 25 May statement, right?  
[13] A: Correct.  
[14] Q: All right.  
[15] And I want you to go down to — it  
[16] is the paragraph that starts — well, let me  
[17] withdraw that a minute.  
[18] You've been a master for a long  
[19] time. You've been a seaman for a long time,  
[20] correct?  
[21] A: Yes.  
[22] Q: You know how to keep seaman's  
[23] records; don't you, logbooks?  
[24] A: Actually, this is my practice that

[1] time of the occurrence is noted, right?  
[2] A: Right.  
[3] Q: And the time is noted exactly  
[4] because it's important; isn't that correct?  
[5] A: Yes.  
[6] Q: The exact time of an incident. You  
[7] don't say, Oh, sometime today, you will put  
[8] down — this is just an example — you put down  
[9] something like 0820 or 0901.  
[10] I mean, you put the exact time.  
[11] A: May I interrupt you?  
[12] Q: You certainly may.  
[13] A: I'm afraid you was not specific  
[14] talking about the logbook, because you used the  
[15] word incidents. We are not talking in the logbook  
[16] about the incident, we are talking — we are  
[17] talking in the logbook about the facts.  
[18] Q: Okay.  
[19] A: For example, when was the course  
[20] alternation. It is the fact.  
[21] Q: Good. And I will accept that.  
[22] A: And logbook on the first page has  
[23] documents related to, and not all the information  
[24] are included in the logbook.  
[25]

Page 17

*M. Kowalewski*

Page 19

*M. Kowalewski*

[1] I — whatever I'm doing, it is my personal  
[2] practice, whatever I'm doing on the every one  
[3] vessel, since the computers became available in  
[4] the market, I keep the records from every one  
[5] vessel I was sailing the last ten years.  
[6] Q: All I'm talking about is, you do  
[7] know how to keep a vessel's log; don't you?  
[8] A: I don't understand your question.  
[9] Q: As a master, isn't it your  
[10] responsibility to see that a deck log is  
[11] maintained on board the vessels that you are in  
[12] command of?  
[13] A: That is according to the law.  
[14] Q: Yes. And entries are made in there  
[15] as to various events that occur on each day,  
[16] correct?  
[17] A: Correct.  
[18] Q: And the general practice is the  
[19] entry, the pages, I'm not referring to anything  
[20] I'm just showing you a sample, these will contain  
[21] the date, you have a date on top so you know what  
[22] day you were referring to, correct?  
[23] A: Correct.  
[24] Q: And the entries are made and the

[1] Q: Okay.  
[2] A: For example —  
[3] Q: Wait. Stop a minute. Now you're  
[4] not answering my question, you're making a speech.  
[5] A: Okay.  
[6] Q: What I want now, again, when you  
[7] enter facts, as you've explained it in the  
[8] logbook, you put the time of the fact; do you not?  
[9] A: I don't enter the facts in the  
[10] logbook because it is not the place where the  
[11] facts or message to be entered.  
[12] Q: No, no, it was my fault, I said  
[13] facts, no.  
[14] You used the word, it's not an  
[15] incident, it's a fact, F-A-C-T. I'm talking about  
[16] when you make an entry that you're altering course  
[17] or things like that, that type of fact.  
[18] A: Yes.  
[19] Q: You put down the exact time of the  
[20] occurrence.  
[21] A: Yes.  
[22] Q: That's all I'm saying about.  
[23] So a seaman in making factual  
[24] entries puts the exact time, he's not sloppy?  
[25]

MACIEJ KOWALEWSKI  
September 12, 2007

MICHAEL STEPSKI v.  
THE M/V NORASIA ALYA

Page 20

[1] *M. Kowalewski*  
[2] A: I don't understand what you mean  
[3] sloppy.  
[4] Q: You don't just say — all right, an  
[5] example. If you're putting in the fact the change  
[6] of course, you will put in on the date and  
[7] write — this is just an example — like 0812.  
[8] You put the exact time?  
[9] A: Correct.  
[10] Q: Okay.  
[11] When I say sloppy, you don't say  
[12] some time we changed the course, you don't use  
[13] language like that; do you?  
[14] A: No, we are always specific.  
[15] Q: Okay. All right.  
[16] So I'm now referring back to the  
[17] statement of 25 May '04 at Newport News, and the  
[18] one that indicates that you received information  
[19] on Channel 16 from USCG.  
[20] A: Correct.  
[21] Q: Are you following that?  
[22] A: Yes, I see that.  
[23] Q: Okay.  
[24] Now in that you are very specific.  
[25] You said, "Informing ships that in position LAT."

Page 21

[1] *M. Kowalewski*  
[2] period, "4032 N, LON 07140 W."  
[3] Those are coordinates to position  
[4] where the EPIRB was; is that correct?  
[5] A: Yes.  
[6] Q: Okay.  
[7] All I want to know, where did you  
[8] get those exact figures from that you incorporated  
[9] into your May 25th submission to the Liberian  
[10] government?  
[11] A: I believe — I believe it happened  
[12] in this VHF transmission.  
[13] Q: You believe, you're not sure?  
[14] A: Well, as I said before, the long  
[15] time past, and I don't remember every thing that  
[16] happened in that day.  
[17] Q: I didn't ask you that. I'm just  
[18] saying, you're not sure that the Coast Guard  
[19] message gave you those exact coordinates?  
[20] A: I don't remember.  
[21] Q: Did you — can you think now, was  
[22] there any other source available to get those  
[23] exact coordinates from?  
[24] A: Please specify what you mean other  
[25] source.

Page 22

[1] *M. Kowalewski*  
[2] Q: Other source, any other place.  
[3] Coast Guard sent you a message.  
[4] You've spoken about that. On May 22nd.  
[5] A: It was not only the one message.  
[6] Q: That's what we're getting at.  
[7] You got other messages?  
[8] A: Yes.  
[9] Q: All right. When?  
[10] A: The day after.  
[11] Q: May 23rd?  
[12] A: Yes.  
[13] Q: On May 22nd, however, only one  
[14] message?  
[15] A: As I remember, it was received, the  
[16] message on the Channel 16 as in my statement of  
[17] facts, and another one message.  
[18] Q: Captain, stick with the question.  
[19] MR. WIEGEL: He's answering.  
[20] Q: I said on May 22nd. Just stick with  
[21] May 22nd.  
[22] MR. WIEGEL: He's trying to  
[23] answer the question.  
[24] MR. HEALEY: I'll withdraw  
[25] that question and try it again.

Page 23

[1] *M. Kowalewski*  
[2] Q: Captain, on May 22nd, you received a  
[3] message from the Coast Guard.  
[4] A: Correct.  
[5] Q: On May 22nd, do you have any  
[6] recollection of receiving any other message?  
[7] A: Please explain what you mean  
[8] recollection?  
[9] Q: You don't know what it means?  
[10] A: No, in the contents of facts we are  
[11] talking, I don't understand the meaning of this  
[12] what you're saying.  
[13] Q: You don't understand what I mean  
[14] when I say do you have any other recollection?  
[15] A: This I understand.  
[16] Q: Okay.  
[17] Do you have any other  
[18] recollection —  
[19] A: Any other message.  
[20] Q: Do you have any other  
[21] recollection —  
[22] A: This I don't understand.  
[23] MR. WIEGEL: Why don't we try  
[24] interpreting the question.  
[25] MR. HEALEY: No, I don't want

Page 24

Page 26

(1) *M. Kowalewski*  
(2) to, let him go on. This is fine with  
(3) me that he doesn't understand it.  
(4) Q: Now, do you have — do you have in  
(5) front of you or available to you the logbooks of  
(6) the NORASIA ALYA?  
(7) MR. WIEGEL: You want the full  
(8) logbooks? We have the full logbooks.  
(9) MR. HEALEY: Alan —  
(10) MR. WIEGEL: Yes, we have the  
(11) logbooks.  
(12) MR. HEALEY: — what we're  
(13) looking for is...  
(14) Q: Now, I'm just asking you some  
(15) general questions about the logbooks that you had  
(16) on the NORASIA ALYA. Understand?  
(17) A: Yes, I understand.  
(18) Q: All right.  
(19) Now, I'm not at this point asking  
(20) you about entries, I'm asking you about: Were  
(21) there any instructions from the company in the  
(22) front of the logbook?  
(23) Look at your logbook.  
(24) MR. WIEGEL: You know what,  
(25) can we just... I made — off the

(1) *M. Kowalewski*  
(2) Q: I'll try it again.  
(3) You explained the front pages of the  
(4) log that the printed information is simply the  
(5) legal rules that have to be followed.  
(6) A: I will say like this.  
(7) Q: Say it.  
(8) A: It is written the heading and the  
(9) every one logbook has to be kept specific, and on  
(10) the vessel is several logbooks concerning the  
(11) operation of the vessel, not only the one that  
(12) logbook. As you can see, this is a deck logbook.  
(13) We have engine logbook. We have a radio logbook.  
(14) Q: I can save you a lot of trouble. I  
(15) only want to talk about the deck logbook, the one  
(16) in front of you.  
(17) A: Okay.  
(18) Q: And you just explained to me that  
(19) these printed rules and regulations are not  
(20) something made up by the company.  
(21) A: Of course not.  
(22) Q: These are the legal rules that  
(23) govern all mariners?  
(24) A: Yes.  
(25) Q: Yes.

Page 25

Page 27

(1) *M. Kowalewski*  
(2) record a minute.  
(3) (Discussion off the record.)  
(4) BY MR. HEALEY:  
(5) Q: Go ahead.  
(6) A: Those what's in the logbook here on  
(7) those pages, that is not the company sending  
(8) orders. It is not the company sending orders,  
(9) this — what is here on the logbook.  
(10) We must refer to the title, "IMO  
(11) International Convention Standard of Training  
(12) Certification and Watch Keeping for Seafarers".  
(13) It is extract of the regulations.  
(14) Q: Okay. So it's more than company  
(15) order, it's legal regulations? .  
(16) A: Correct.  
(17) Q: All right.  
(18) And so the company is simply  
(19) printing up what is the law and the rules that  
(20) govern the management of a ship for your help,  
(21) your information?  
(22) A: Excuse me, but still I don't  
(23) understand this, what you want to say.  
(24) Q: I will withdraw it.  
(25) A: Maybe you use the interpreter.

(1) *M. Kowalewski*  
(2) And so —  
(3) A: But the ship specific. Ship  
(4) specific.  
(5) Q: All right. These are the legal  
(6) rules that govern all mariners.  
(7) Now, on May 22nd, you were a  
(8) mariner?  
(9) A: Correct.  
(10) Q: You were the master of the NORASIA  
(11) ALYA?  
(12) A: Yes.  
(13) Q: These rules, if they covered a  
(14) certain situation, applied to you as the master?  
(15) A: Yes.  
(16) Q: All right.  
(17) Now, go ahead, take a look at those  
(18) sections of printed rules, okay, and if you can  
(19) get to what is exactly — I'll read it and I'll  
(20) show it to you — S-O-L-A-S, SOLAS, C-H-A-P-T.,  
(21) period, Roman numeral IV, Reg 17.  
(22) That's it and see if you can find it  
(23) in your logbook.  
(24) MR. WIEGEL: I'll note I think  
(25) we're looking at Roman numeral page 4.



MACIEJ KOWALEWSKI  
September 12, 2007

MICHAEL STEPSKI v.  
THE M/V NORASIA ALYA

Page 28

[1] *M. Kowalewski*  
[2] MR. HEALEY: I gave it to him.  
[3] MR. WIEGEL: Yes, I think  
[4] that's the correct page.  
[5] Q: Captain, I'll ask you some  
[6] questions. I want to know, have you found what  
[7] I'm referring to?  
[8] A: Yes.  
[9] Q: Okay.  
[10] MR. WIEGEL: Did you say which  
[11] regulation you're referring to? I  
[12] didn't catch it.  
[13] THE WITNESS: SOLAS Chapter 4,  
[14] Reg 17.  
[15] MR. WIEGEL: Okay. Thank you.  
[16] BY MR. HEALEY:  
[17] Q: Now, before I ask you about that, I  
[18] want to know if on May 22nd, 2004, you logged one  
[19] of the officers for failing to obey one of these  
[20] rules; that is, he did not tell you of restricted  
[21] visibility.  
[22] You can look at the page, if you  
[23] wish.  
[24] (Pause.)  
[25] Captain?

Page 29

[1] *M. Kowalewski*  
[2] A: Yes.  
[3] Q: I ask you on May 22nd, did you make  
[4] an entry in the logbook at 0430 concerning the  
[5] second officer?  
[6] A: Actually, that regulation is not  
[7] meeting the situation which happened.  
[8] MR. WIEGEL: No, hold on.  
[9] Just answer the question to start  
[10] with, okay?  
[11] THE WITNESS: Okay.  
[12] Q: Isn't it correct at 0430 on  
[13] May 22nd, you made had an entry made in the  
[14] logbook concerning the second officer, "The master  
[15] was not informed by the watch officer that there  
[16] is restricted visibility."  
[17] Did you not put that in the logbook?  
[18] A: Yes, I put it in the logbook.  
[19] Q: That's what I'm asking.  
[20] And, again, there are SOLAS  
[21] regulations — you don't have to go to it. There  
[22] are SOLAS regulations that the watch officer is  
[23] supposed to notify the master, correct?  
[24] A: Yes.  
[25] Q: So you found the second officer

Page 30

[1] *M. Kowalewski*  
[2] didn't obey the regulation that is reprinted in  
[3] the book?  
[4] A: Yes.  
[5] Q: Serious; isn't that?  
[6] A: It is serious.  
[7] Q: Yes, and so you made an entry in the  
[8] logbook?  
[9] A: Yes.  
[10] Q: All right.  
[11] Now, we'll go back to that SOLAS  
[12] Chapter 4, Regulation 17. I ask you to look at  
[13] it.  
[14] Now, as you've said, these are rules  
[15] that apply to you as a master mariner, correct?  
[16] A: Correct.  
[17] Q: These are rules that good seamanship  
[18] means if reasonable you should follow it, right?  
[19] A: Always.  
[20] Q: Always.  
[21] A: When reasonable. When safety  
[22] permits.  
[23] Q: And so this — I'm going to read it  
[24] to you and you read it with me.  
[25] This regulation says, quote: "The

Page 31

[1] *M. Kowalewski*  
[2] master of a ship at sea, which is in a position to  
[3] be able to provide assistance on receiving a  
[4] signal from any source that persons are in  
[5] distress at sea, is bound to proceed with all  
[6] speed to their assistance." Now stop right there.  
[7] I have read it correctly; have I  
[8] not?  
[9] A: Yes.  
[10] Q: That's what the rule says. That was  
[11] the rule that put an obligation on you if  
[12] reasonable?  
[13] A: Yes.  
[14] Q: You did receive, as you just told us  
[15] from the Coast Guard, a signal that indicated  
[16] possibly somebody's in distress, an EPIRB?  
[17] A: Yes.  
[18] Q: An EPIRB, is it correct, roughly  
[19] speaking, is a device that will — if it's  
[20] activated by water in an accident, it starts  
[21] pulsing out a signal; is that correct?  
[22] A: Correct.  
[23] Q: The purpose of the EPIRB under those  
[24] circumstances, is to notify people that the man  
[25] whose boat held the EPIRB he might be in trouble.

Page 32

*M. Kowalewski*

[1] *M. Kowalewski*  
[2] A: Yes.  
[3] Q: And is it correct, if you know, that  
[4] the way the EPIRB works, it sends a signal into  
[5] one of these space satellites which is then picked  
[6] by various stations here on earth. If you know,  
[7] is that how it works?  
[8] A: Yes.  
[9] Q: And it works with the speed of  
[10] sound — speed of light; does it not. Almost  
[11] instantaneous?  
[12] A: Yes.  
[13] Q: And so that — let me withdraw that.  
[14] Is it fair to say that from the time  
[15] the EPIRB starts sending out a signal to the time  
[16] it can be received is very short? It doesn't take  
[17] days or hours?  
[18] MR. WIEGEL: If he knows.  
[19] A: It depends. I know about this, but  
[20] it depends.  
[21] Q: You know about what?  
[22] A: Sometimes the EPIRB signal is picked  
[23] up in five minutes, sometimes it pick it up in 15  
[24] minutes, sometimes it pick it up in one hour.  
[25] Q: In other words, it can vary?

Page 33

*M. Kowalewski*

[1] *M. Kowalewski*  
[2] A: It can vary. That is what the  
[3] practice is showing and what is on the courses.  
[4] When we attend the courses, they tell us about  
[5] that.  
[6] Q: I understand that.  
[7] But what you're saying, it can be  
[8] picked up very quickly under certain conditions?  
[9] A: It can be picked up very quickly.  
[10] But also can be with some time delay.  
[11] Q: I understand that.  
[12] Now, remember we were talking about  
[13] the fact that good seaman practice, okay, is that  
[14] when you make entries, you make them about with  
[15] exact times so people know exactly when things  
[16] happened?  
[17] A: Yes.  
[18] Q: But when you reported — look at  
[19] this thing, May 25th, Newport News, you submitted  
[20] a — what you called a statement of facts. All  
[21] right?  
[22] A: Yes.  
[23] Q: Now, you were submitting this, am I  
[24] correct —  
[25] A: Yes.

Page 34

*M. Kowalewski*

[1] *M. Kowalewski*  
[2] Q: — to the Liberian government?  
[3] A: Actually, I don't remember if it was  
[4] submitted to the Liberian government. It was  
[5] submitted to the owners.  
[6] Q: All right.  
[7] The NORASIA ALYA?  
[8] A: Really, I don't remember now to who  
[9] I submitted. I'm sure that I submitted this to  
[10] the owners because they were demanding so.  
[11] Q: NORASIA ALYA flew the Liberian flag;  
[12] is that right?  
[13] A: Correct.  
[14] Q: Before you prepared this statement,  
[15] did you speak to anybody to get facts?  
[16] A: What do you mean anybody?  
[17] Q: Anybody. Anybody means anybody.  
[18] Did you speak to lawyers, did you  
[19] call up a friend, did you speak to the chief  
[20] officer? Anybody? Did you speak to anybody so  
[21] you would have accurate information when you  
[22] prepared the statement?  
[23] A: The demand of the company was to  
[24] provide the facts, according to my — the best  
[25] knowledge. However, some — since things which

Page 35

*M. Kowalewski*

[1] *M. Kowalewski*  
[2] happened 22nd of May they were not clear to me,  
[3] and I maybe don't know about everything what  
[4] happened, as a prudent master I taken care to talk  
[5] to every one crew member that they can provide to  
[6] me more information which I can include in that  
[7] statement of facts.  
[8] Q: All right.  
[9] Did you —  
[10] A: My knowledge was limited to the some  
[11] information which I know myself.  
[12] Q: So you did speak to some crew  
[13] members?  
[14] A: I called everybody one by one.  
[15] Q: How about the officers, go to them.  
[16] Did you speak to all of your officers?  
[17] A: Of course.  
[18] Q: Did you speak to any lawyers?  
[19] A: The lawyers attended the case —  
[20] Q: Did you speak to any lawyers for  
[21] help in preparing this statement?  
[22] A: No.  
[23] Q: You said lawyers attended. There  
[24] were lawyers on board the NORASIA ALYA at some  
[25] point?

MACIEJ KOWALEWSKI  
September 12, 2007

MICHAEL STEPSKI v.  
THE M/V NORASIA ALYA

Page 36

[1] *M. Kowalewski*  
[2] A: When the Coast Guard started  
[3] investigation, I informed the owners and the  
[4] owners informed the Club and the Club taken the  
[5] action sending the lawyers in some certain stage,  
[6] not from the beginning of the investigation.  
[7] Q: All right, simple question:  
[8] Lawyers did come aboard the NORASIA  
[9] ALYA at some time? Tell me, yes or no?  
[10] A: Yes.  
[11] Q: When?  
[12] A: Twenty —  
[13] Q: 23rd of May, right?  
[14] A: Evening or afternoon.  
[15] Q: Okay. They did.  
[16] How many lawyers?  
[17] A: Two.  
[18] Q: What were their names, did you  
[19] record it?  
[20] A: I don't remember the names.  
[21] Q: Did you record their names when they  
[22] came aboard?  
[23] A: They giving me the visit cards and I  
[24] kept them with me.  
[25] Q: Where are the cards the lawyers gave

Page 37

[1] *M. Kowalewski*  
[2] you?  
[3] A: I left on board the ship.  
[4] Q: They're still on the ship?  
[5] A: I don't know.  
[6] Q: All right.  
[7] And as you sit here now, you don't  
[8] know who the lawyers were?  
[9] A: The owners and —  
[10] Q: How about the names?  
[11] Did you meet any of the lawyers who  
[12] came on board the ship on May 23rd when you were  
[13] here in New York on this visit?  
[14] A: Actually, I don't remember. I don't  
[15] remember. That was a long time past, and I meet  
[16] in my time millions of people in mean time and I'm  
[17] unable to remember the faces.  
[18] Q: All right.  
[19] Did you meet a Mr. Richard Singleton  
[20] here today?  
[21] A: I meet today only the persons who  
[22] are sitting here, and the person who permit me to  
[23] come here. Nobody else.  
[24] Q: Now, remember we were talking about  
[25] good seaman practice is to make —

Page 38

[1] *M. Kowalewski*  
[2] A: Of course.  
[3] Q: — hold it.  
[4] Is it make very specific time  
[5] entries as to events — as to facts, right?  
[6] A: Yes.  
[7] Q: Now, in this statement that you  
[8] submitted to the owners for — probably for the  
[9] Liberian government that's Newport News 25 May —  
[10] MR. WIEGEL: Note my  
[11] objection.  
[12] Q: — as to this CH16 message,  
[13] Channel 16, the time you say is, quote, "around  
[14] 1400," correct?  
[15] A: Correct.  
[16] Q: That's not an exact time; is it?  
[17] A: The message —  
[18] Q: That's not an exact time, is it,  
[19] "around 1400"?  
[20] A: The time is around because —  
[21] Q: You do agree with me? That's all  
[22] I'm saying to you, around?  
[23] A: It is not — actually, in that case  
[24] it is exact time.  
[25] Q: Around 1400, in your opinion, is an

Page 39

[1] *M. Kowalewski*  
[2] exact time?  
[3] A: Yes.  
[4] Q: Okay.  
[5] A: In that particular case.  
[6] Q: Fine. That's what you said.  
[7] This scrap paper note that you made  
[8] on May 22nd, did you have it when you made this  
[9] what you call statement of facts on 25 May? Did  
[10] you have that scrape of paper with you?  
[11] A: I told you already, I don't have the  
[12] paper with me.  
[13] Q: No, no, I told you — you told me  
[14] already you didn't have it now. I said, did you  
[15] have it with you, that scrape of paper, when you  
[16] prepared this (indicating) Newport News 25 May  
[17] statement?  
[18] A: I don't remember this.  
[19] Q: What I'm trying to get is, then,  
[20] see, when you gave, see, exact positions as to  
[21] latitude and longitude in your statement, is that  
[22] just your memory or did you have it written down  
[23] some place?  
[24] A: Well, maybe I will use the  
[25] interpretator in that case.



Page 40

*M. Kowalewski*

[1] *M. Kowalewski*  
 [2] Q: Why, didn't you understand me? Just  
 [3] tell me.  
 [4] A: No, I don't understand the change of  
 [5] the questions, because I have the intention to  
 [6] give the — for you the explanation where you can  
 [7] understand the meaning of the point in the — in  
 [8] the statement of facts. But maybe I'm not so  
 [9] specific and we are not going to the point which I  
 [10] would like to highlight.

[11] Q: All right.  
 [12] Captain, before we go to the  
 [13] interpreter, do you understand that you are here  
 [14] to answer my questions?

[15] A: Yes.

[16] Q: Do you understand that you're not  
 [17] here to make speeches or make the points you want?  
 [18] Do you understand that?

[19] A: I understand.

[20] Q: So, Captain, you should understand  
 [21] this: If you want to say something and I don't  
 [22] ask you, your attorney will have a chance. Just  
 [23] answer my questions.

[24] Can you do that?

[25] A: Yes.

Page 41

*M. Kowalewski*

[1] *M. Kowalewski*  
 [2] MR. WIEGEL: He's trying to do  
 [3] that, Mr. Healey.

[4] MR. HEALEY: That's what you  
 [5] think.

[6] Q: Now, we're going to go back to this  
 [7] May 22nd, that's the time that you got the Coast  
 [8] Guard message, all right?

[9] A: Yes.

[10] MR. WIEGEL: Just a minute.  
 [11] Off the record.

[12] (Discussion off the record.)

[13] MR. WIEGEL: The question that  
 [14] the Captain asked to be interpreted  
 [15] has been withdrawn.

[16] BY MR. HEALEY:

[17] Q: Now, we're moving back to, right,  
 [18] May 22nd when you got the message on board the  
 [19] NORASIA ALYA from the Coast Guard about an EPIRB  
 [20] all right?

[21] Are you with me now?

[22] A: Yes.

[23] Q: At that point when you received the  
 [24] message, did you plot, did you fix the position of  
 [25] the NORASIA ALYA?

Page 42

*M. Kowalewski*

[1] *M. Kowalewski*  
 [2] A: I checked the position on the ECDIS.  
 [3] Q: And that would show you, am I  
 [4] correct, where your vessel, the NORASIA ALYA, was  
 [5] at the time you received the Coast Guard message?

[6] A: Correct.

[7] Q: All right.  
 [8] Now, did you make a note as to where  
 [9] the NORASIA ALYA was when you received the Coast  
 [10] Guard message?

[11] A: We have a screen shot for 1400, or  
 [12] if not, that is in the memory of the ECDIS.

[13] Q: What I'm asking is, did you have  
 [14] some record where you mark where the NORASIA ALYA  
 [15] was when you received the Coast Guard message?

[16] (Pause.)

[17] A: Yes.

[18] Q: All right. You're showing this.  
 [19] Tell us what you're showing us here?

[20] A: Position in the logbook.

[21] Q: All right. Now, what you're showing  
 [22] me is the NORASIA ALYA logbook, right, for  
 [23] 22 May 04; all right?

[24] And you said that in here there is a  
 [25] entry as to where the vessel was when you received

Page 43

*M. Kowalewski*

[1] *M. Kowalewski*  
 [2] the Coast Guard message?

[3] A: Yes.

[4] Q: All right. Well, show or read it to  
 [5] us.

[6] A: Excuse me, what suppose I do now?

[7] Q: All right. To be clear, you are  
 [8] going — you say that on that page there is some  
 [9] entry that will show where the NORASIA ALYA was  
 [10] when you received the Coast Guard message,  
 [11] correct?

[12] A: Correct.

[13] Q: And I just want you now to read it  
 [14] to me or show me where?

[15] A: At 1400, the latitude was  
 [16] 40 degrees, 38.9 minutes north, and the longitude  
 [17] 072 21.3 west. As per logbook information entered  
 [18] by second officer.

[19] MR. HEALEY: All right.

[20] MR. WIEGEL: Mr. Healey, if  
 [21] you don't mind, let me just make it  
 [22] clear for the record that that's  
 [23] NORASIA ALYA logbook No. 2 and we're  
 [24] on page No. 3 which is the daily pages  
 [25] for Saturday 22 May, 2004.



MACIEJ KOWALEWSKI

September 12, 2007

MICHAEL STEPSKI v.  
THE M/V NORASIA ALYA

Page 44

*M. Kowalewski*

[1] *M. Kowalewski*  
 [2] Q: All right. And what you — Captain,  
 [3] what you have just read to us is the entry, the  
 [4] latter part of the page 3 starting 1400?

[5] A: I need now the assistance of the  
 [6] attorney.

[7] MR. WIEGEL: No, no, just —  
 [8] you just read that from that page,  
 [9] correct?

[10] THE WITNESS: Yes.

[11] MR. WIEGEL: That's all you  
 [12] need to answer.

[13] A: I read this from the page.

[14] Q: Okay. That's all I'm asking you.  
 [15] And what was the distance between  
 [16] the NORASIA ALYA at 1400 and the EPIRB  
 [17] coordinates?

[18] A: I must take a look in the chart.

[19] Q: At that point — let me ask you  
 [20] this, you can, but right now what I want to get  
 [21] is:

[22] At that time, you pointed out an  
 [23] entry of 1400 to me, correct?

[24] A: Yes.

[25] Q: I want to know if at that time,

Page 45

*M. Kowalewski*

[1] *M. Kowalewski*  
 [2] 1400, any computations were done on board the  
 [3] vessel, by you or anybody else, as to the distance  
 [4] between the NORASIA ALYA at 1400 —

[5] Are you listening to me?

[6] A: Yes, I listen.

[7] Q: — and the coordinates of the EPIRB?  
 [8] Did you make any —

[9] A: Of course I made the computation.

[10] Q: Okay, you made a computation at that  
 [11] point.

[12] A: Taking in consideration that I will  
 [13] attend the SAR operation.

[14] Q: What was the distance between you  
 [15] and the EPIRB?

[16] A: Presently I don't know because I  
 [17] have to check on the chart.

[18] Q: Okay.

[19] Now, at this point, 1400 we're  
 [20] talking about, you had been traveling from an east  
 [21] to west direction most of the day, correct?

[22] A: Yes.

[23] Q: And you had stated at some point in  
 [24] some other things traffic wasn't very heavy coming  
 [25] east to west into New York?

Page 46

*M. Kowalewski*

[1] *M. Kowalewski*  
 [2] A: Can you repeat your question again?

[3] Q: Yes, I will.

[4] After as you traveled along before  
 [5] 1400, did you note that traffic was not very  
 [6] heavy?

[7] A: I note that.

[8] Q: And that means that you didn't see a  
 [9] lot of other ships as you were coming from east to  
 [10] west?

[11] A: Yes.

[12] Q: So when you got that message, you  
 [13] knew there were not a lot of other ships around  
 [14] who could immediately respond; is that correct?

[15] A: Well, actually not.

[16] Q: What do you mean actually not? You  
 [17] didn't know it?

[18] A: Disagree with your — with your  
 [19] sentence.

[20] Q: All right.

[21] A: Because I don't have knowledge what  
 [22] was behind of me.

[23] Q: All right. All right.

[24] A: I was talking about my situation in  
 [25] the time and the position where I was.

Page 47

*M. Kowalewski*

[1] *M. Kowalewski*  
 [2] Q: All right.

[3] A: I don't know if the traffic was  
 [4] maintaining heavy or light.

[5] Q: Did you — did you attempt to find  
 [6] out whether or not there were other ships in the  
 [7] area?

[8] A: I try.

[9] Q: What did you do?

[10] A: I used the display of the ECDIS to  
 [11] see visible AIS, and as well I change to the range  
 [12] 96 miles.

[13] Q: Did you get on the phone to anybody?  
 [14] Did you call anybody? Did you call the Coast  
 [15] Guard?

[16] A: I rely the information regarding my  
 [17] ability to attempt and SAR operation since I left  
 [18] the Hamburg with the plot of the position in the  
 [19] Amver system.

[20] Q: Did you hear my question?

[21] A: Yes.

[22] Q: And my question was:

[23] Did you call the Coast Guard? And  
 [24] the answer should be "yes" or "no"?

[25] A: No.

Page 48

*M. Kowalewski*

(1) *M. Kowalewski*  
(2) Q: You did not, all right.  
(3) At this time you were aware of SOLAS  
(4) Chapter 4, Reg 17; were you not?  
(5) "The master of a ship at sea which  
(6) is in a position to be able to provide assistance  
(7) on receiving a signal from any source that persons  
(8) in distress is bound to proceed with all speed to  
(9) assistance."  
(10) You are aware of that obligation of  
(11) your's; were you not?  
(12) A: I was aware.  
(13) Q: All right. And now I'll continue,  
(14) we'll read it.  
(15) "If the ship receiving the distress  
(16) alert," all right, we're still on that regulation,  
(17) that was Roman numeral page IV. You got it?  
(18) A: Yes.  
(19) Q: If it's — it says: "If the ship  
(20) receiving the distressed alert," and you did, the  
(21) NORASIA ALYA did receive the distress alert; did  
(22) they not?  
(23) MR. WIEGEL: Note my  
(24) objection.  
(25) MR. HEALEY: You can just

Page 49

*M. Kowalewski*

(1) *M. Kowalewski*  
(2) answer it. That's lawyer stuff.  
(3) MR. WIEGEL: You can answer.  
(4) Q: You did receive the distress alert  
(5) is the question.  
(6) A: I received — I don't — you ask me  
(7) if I received the distress message?  
(8) Q: No, no, here I read to you again  
(9) from this rule. Now follow with me, I've shown  
(10) you the rule and it says: "If the ship receiving  
(11) the distress alert," and what I'm saying, you did  
(12) acknowledge getting that distress alert from the  
(13) Coast Guard at around 1400, correct?  
(14) MR. WIEGEL: Note my  
(15) objection.  
(16) A: Yes.  
(17) Q: I will ask you more, but just going  
(18) along. So you got the distress alert.  
(19) Okay. Now it says: "If the ship is  
(20) unable," that's the NORASIA ALYA, was there  
(21) anything that made it unable for the NORASIA ALYA  
(22) to proceed?  
(23) A: The vessel was all the time able to  
(24) render assistance to anybody.  
(25) Q: That's what I'm saying. There was

Page 50

*M. Kowalewski*

(1) *M. Kowalewski*  
(2) nothing there that would have stopped you from  
(3) doing it?  
(4) A: No.  
(5) Q: All right.  
(6) And — and it says here, see: "If  
(7) the master considered it unreasonable or  
(8) unnecessary," did you consider it unreasonable to  
(9) try to help?  
(10) A: No, I don't consider it unreasonable  
(11) to help.  
(12) Q: In fact, that's an obligation of  
(13) every seaman, isn't it, to help people in distress  
(14) on the high seas?  
(15) A: Of course.  
(16) Q: All right.  
(17) A: Unless the own safety is not  
(18) involved. But always that is obligation.  
(19) Q: If it's reasonable, every seaman has  
(20) an obligation to assist another seaman in  
(21) distress?  
(22) A: Correct.  
(23) Q: Is that correct?  
(24) A: It is correct.  
(25) Q: And you've also indicated you got

Page 51

*M. Kowalewski*

(1) *M. Kowalewski*  
(2) the distress signal, and the NORASIA ALYA there  
(3) was nothing to prevent it from going back?  
(4) A: Nothing.  
(5) Q: Nothing. All right.  
(6) And it says, "However, if the master  
(7) considered it unreasonable," you didn't think it  
(8) was unreasonable.  
(9) Did you consider it unnecessary to  
(10) try to help these people in distress?  
(11) MR. WIEGEL: Note my  
(12) objection.  
(13) You can answer.  
(14) MR. HEALEY: I think we should  
(15) explain. The objection is lawyers do  
(16) this for later. Don't let it distract  
(17) you.  
(18) MR. WIEGEL: I'll tell him he  
(19) can answer.  
(20) You can answer.  
(21) Q: So what I said, as you just said,  
(22) you got the distress signal, we agree, you were  
(23) certainly able, the NORASIA ALYA has the  
(24) capability to go back?  
(25) A: Yes.

MACIEJ KOWALEWSKI

September 12, 2007

MICHAEL STEPSKI v.

THE M/V NORASIA ALYA

Page 52

*M. Kowalewski*

[1] *M. Kowalewski*  
 [2] Q: You agreed this is a primary  
 [3] obligation of seaman that we owe to each other?  
 [4] A: I agree.  
 [5] Q: It certainly isn't unnecessary to  
 [6] try to help other seaman in distress; is it?  
 [7] A: It is necessary.  
 [8] Q: It is necessary. All right.  
 [9] So get back to Regulation 17. It  
 [10] says, "If the master," okay, "considers it  
 [11] unreasonable or unnecessary," you just said you  
 [12] didn't think it was unreasonable. You didn't  
 [13] think it was unnecessary, but is it a fact you  
 [14] didn't return — hold it. Withdraw it.  
 [15] Isn't it a fact that you did not  
 [16] proceed with all speed to assist? You didn't; did  
 [17] you?  
 [18] A: No, I was not proceeding with the  
 [19] full speed, correct.  
 [20] MR. WIEGEL: He's answering  
 [21] the question.  
 [22] MR. HEALEY: Okay. I'm sorry.  
 [23] MR. WIEGEL: Let him answer  
 [24] the question.  
 [25] MR. HEALEY: I thought he had

Page 53

*M. Kowalewski*

[1] *M. Kowalewski*  
 [2] stopped.  
 [3] A: I was not doing this that I was  
 [4] proceeding on the — I was not doing — proceeding  
 [5] to that place of incident.  
 [6] Q: That's what I'm asking. We agree,  
 [7] after receiving the — as we have already — after  
 [8] receiving the message from the Coast Guard of  
 [9] people in distress, you did not proceed with all  
 [10] speed to the location of the EPIRB; did you?  
 [11] MR. WIEGEL: Note my  
 [12] objection.  
 [13] You can answer.  
 [14] A: No.  
 [15] Q: As a matter of fact, Captain, after  
 [16] receiving the message from the Coast Guard and  
 [17] checking the position of your ship and the EPIRB,  
 [18] it was to the east of you; was it not?  
 [19] A: Yes.  
 [20] Q: What you did was proceed, you ran  
 [21] the NORASIA ALYA at full speed, 22.5 knots, away  
 [22] from the EPIRB; didn't you?  
 [23] A: Well, I will not use the — that  
 [24] wording.  
 [25] Q: Did the NORASIA ALYA —

Page 54

*M. Kowalewski*

[1] *M. Kowalewski*  
 [2] A: I will say vessel was proceeding  
 [3] with the speed approximately 22 knots to her  
 [4] destination.  
 [5] Q: You don't like the word run; is that  
 [6] it?  
 [7] A: Yes.  
 [8] Q: Okay.  
 [9] But you do say that the NORASIA ALYA  
 [10] after getting word that there was a possible  
 [11] seaman in peril to your east, you proceeded at  
 [12] 22.5 knots to the west?  
 [13] MR. WIEGEL: Note my  
 [14] objection.  
 [15] Q: Is that right?  
 [16] MR. WIEGEL: Note my  
 [17] objection.  
 [18] A: I was proceeding with the speed  
 [19] about 22 knots —  
 [20] Q: West?  
 [21] A: — to the destination port what was  
 [22] the New York.  
 [23] Q: West?  
 [24] A: Correct.  
 [25] Q: So that you were going away from the

Page 55

*M. Kowalewski*

[1] *M. Kowalewski*  
 [2] people in possible peril, correct?  
 [3] MR. WIEGEL: Note my  
 [4] objection.  
 [5] A: No.  
 [6] Q: Wait a minute. If the EPIRB is to  
 [7] the east, okay, and the NORASIA ALYA is proceeding  
 [8] west, isn't the distance getting greater between  
 [9] the NORASIA ALYA and the EPIRB?  
 [10] A: I was —  
 [11] Q: Captain, just listen to the  
 [12] question. Don't jump ahead and try and make  
 [13] excuses.  
 [14] MR. WIEGEL: Note my objection  
 [15] to that line of questioning.  
 [16] Q: All I said to you is if the NORASIA  
 [17] ALYA is going west and the EPIRB is to the east,  
 [18] the distance is getting greater between the ship,  
 [19] NORASIA ALYA, and the EPIRB, right?  
 [20] A: Correct.  
 [21] Q: That's all I was getting you to say.  
 [22] And that you did not call the Coast  
 [23] Guard during this entire procedure to tell them  
 [24] that you were on station; did you?  
 [25] A: I was not calling Coast Guard on the



Page 56

*M. Kowalewski*

(1) Channel 16.  
(2) Q: Did you call them on any channel?  
(3) A: I was not calling Coast Guard on any  
(4) channel.  
(5) Q: Okay. All right. So you didn't  
(6) call the Coast Guard.  
(7) You proceeded on in a westerly  
(8) direction because ultimately you were heading for  
(9) Port Elizabeth; is that right?  
(10) A: Yes.  
(11) Q: Is it correct, however, after  
(12) proceeding at 22.5 knots for a while, you dropped  
(13) anchor out at Ambrose?  
(14) A: Correct.  
(15) Q: How long did you sit at Ambrose at  
(16) anchor?  
(17) A: I don't remember exactly but —  
(18) Q: Look at your logbook.  
(19) A: — it is in the logbook.  
(20) (Pause.)  
(21) Vessel was at anchor from 22nd of  
(22) May, 1742 to 23rd of May, 0218.  
(23) Q: Okay. All right.  
(24) Over that period of time, did you  
(25)

Page 57

*M. Kowalewski*

(1) make any attempt to learn anything more about the  
(2) EPIRB distress signal?  
(3) A: Maintaining the watch on the  
(4) Channel 16.  
(5) Q: And did you hear anything?  
(6) A: I don't remember.  
(7) Q: Okay.  
(8) Did you take action — when I say  
(9) "you," I mean you or your officers — did you take  
(10) action to try to call the Coast Guard and see what  
(11) was happening?  
(12) A: When we arrive to Ambrose, we  
(13) reported our arrival.  
(14) Q: To whom?  
(15) A: To pilot station and —  
(16) Q: Captain, I don't mean to cut you  
(17) off. I see you drifting. Coast Guard, just Coast  
(18) Guard.  
(19) At Ambrose — all I'm saying, see,  
(20) at Ambrose, while you sat there for hours, did you  
(21) attempt, see, to find out the situation concerning  
(22) the EPIRB?  
(23) A: What do you mean to find out?  
(24) Q: Call the Coast Guard and say, Have  
(25)

Page 58

*M. Kowalewski*

(1) they been rescued? Have they been saved? Can I  
(2) help? Did you do anything like that?  
(3) A: We received the message from the  
(4) Coast Guard.  
(5) Q: No, no, did you take action, not  
(6) you — never mind getting it, you told me that.  
(7) Did you take action while standing  
(8) by at Ambrose?  
(9) A: No.  
(10) Q: All right.  
(11) Now, Chapter 4 the regulation — get  
(12) back to that — 17, that's Roman numeral IV, the  
(13) page.  
(14) Are you with me now?  
(15) A: Yes.  
(16) Q: Again, we're just looking at that  
(17) Chapter 4 Regulation 17, okay?  
(18) Are you with me?  
(19) A: Yes.  
(20) Q: Because you've already explained  
(21) this sets forth the master's duty under certain  
(22) circumstances, correct?  
(23) This defines the master's duty under  
(24) certain circumstances.  
(25)

Page 59

*M. Kowalewski*

(1) A: You mean —  
(2) Q: This regulation.  
(3) A: Yes.  
(4) Q: Okay.  
(5) Because we've already gone over the  
(6) part that says: "The master has a duty to proceed  
(7) with all speed to assist." All right, you didn't.  
(8) You did not proceed with all speed  
(9) to the site of the EPIRB to give assistance,  
(10) correct?  
(11) A: No.  
(12) Q: You went the other way, correct?  
(13) You went away?  
(14) A: No.  
(15) Q: You proceeded west when the EPIRB  
(16) was to the east; is that correct?  
(17) MR. WIEGEL: Asked and  
(18) answered.  
(19) A: Yes.  
(20) Q: Now look at this again, I want you  
(21) to read with me this 17. It says here, quote, you  
(22) read it with me so I do it right. "The master  
(23) must enter in the logbook the reason for failing  
(24) to proceed to the assistance of the person in  
(25)



Page 60

*M. Kowalewski*

{1} distress." See. "And taking into account the  
 {2} recommendations of the organization inform the  
 {3} appropriate search and rescue service  
 {4} accordingly."

{5} You read that?

{6} A: Yes.

{7} Q: You understand it?

{8} A: I understand it.

{9} Q: All right.

{10} You were aware of that when you were  
 {11} master of the NORASIA ALYA?

{12} A: I was aware of that.

{13} Q: You were aware that that was your  
 {14} duty?

{15} A: Actually —

{16} MR. WIEGEL: Just yes or no.

{17} Q: Yes, that was your duty as master.

{18} A: Yes.

{19} Q: See, again, look at the beginning  
 {20} the first word says, "the master". This is  
 {21} defining the master's duty; isn't it?

{22} A: Yes.

{23} Q: And you were the master of the  
 {24} NORASIA ALYA on that day.

Page 61

*M. Kowalewski*

{1} A: Yes.

{2} Q: All right. See?

{3} And you didn't proceed to the  
 {4} assistance of people in distress; did you?

{5} MR. WIEGEL: Note my  
 {6} objection.

{7} A: No.

{8} Q: The answer is, "no," you told me  
 {9} already.

{10} Now, and you didn't enter in the log  
 {11} anything about getting this message; did you?

{12} A: Not in that log.

{13} Q: Well, this Rule 17 in the front, as  
 {14} you read it, doesn't that require that the master  
 {15} make the entries in this log, in the deck log?

{16} A: Not necessary.

{17} Q: Not necessarily. All right.

{18} Ordinary practice, though, you would  
 {19} be making it in the deck log; wouldn't you?

{20} A: Depends the contents of the message.

{21} Q: That's what you say. Certain  
 {22} messages you don't have to put into the deck log;  
 {23} is that right?

{24} A: Yes.

Page 62

*M. Kowalewski*

{1} Q: But you — it says you have to enter  
 {2} them in the log.

{3} So what's the other log that you can  
 {4} make?

{5} A: Radio log.

{6} Q: The what?

{7} A: Radio log.

{8} Q: Radio log?

{9} A: GMDSS log.

{10} Q: Did you make an entry in the radio  
 {11} log about it?

{12} A: I don't remember. Most probably  
 {13} not.

{14} Q: All right now, think hard. Isn't it  
 {15} correct, you didn't log, see, the reasons for not  
 {16} helping the people in distress any where?

{17} MR. WIEGEL: Note my  
 {18} objection.

{19} A: I don't — I don't know this. I  
 {20} don't remember this.

{21} Q: You don't remember this. All right.

{22} But you do know it wasn't in the  
 {23} radio log, and you do know it wasn't in the deck  
 {24} log, correct?

Page 63

*M. Kowalewski*

{1} A: I —

{2} Q: You just told me that; isn't that  
 {3} correct?

{4} A: I don't remember what was entered in  
 {5} that logbook, if I don't see that logbook.

{6} Q: What logbook are you talking about  
 {7} now?

{8} A: I'm talking about this — we have  
 {9} another GMDSS logbook.

{10} Q: You have to go slower.

{11} You have another?

{12} A: GMDSS.

{13} MR. HEALEY: I don't know what  
 {14} that is.

{15} MR. WIEGEL: Off the record.

{16} (Discussion off the record.)

{17} BY MR. HEALEY:

{18} Q: Tell me what it is, GMDSS?

{19} A: Global Maritime Distress and Safety.

{20} Q: You don't know whether you made an  
 {21} entry in that?

{22} A: I don't remember.

{23} Q: Where is this GMDSS logbook so you  
 {24} could check for your memory?

Page 64

*M. Kowalewski*

- (1)  
(2) A: I don't know.  
(3) Q: Your recollection right now is that  
(4) you did not make an entry — well, you don't have  
(5) to make a recollection.  
(6) You didn't enter it in the deck log?  
(7) A: I didn't enter this.  
(8) Q: You didn't enter it in a radio log?  
(9) A: I don't remember this.  
(10) Q: And you don't remember anything else  
(11) whether you might have entered it?  
(12) A: I cannot reach with the memory three  
(13) years back.  
(14) Q: Okay.  
(15) With no memory, I assume you can't  
(16) remember what you might have entered into some log  
(17) if you could remember; is that correct?  
(18) A: I don't understand your question  
(19) now.  
(20) Q: I don't understand your answer,  
(21) that's why I asked that. All right?  
(22) Now, see, why didn't you go to the  
(23) help these people in distress to the east of you?  
(24) MR. WIEGEL: Note my  
(25) objection.

Page 65

*M. Kowalewski*

- (1) A: The vessel after departure Hamburg  
(2) was participating in the Amver system, giving to  
(3) the Amver intended route the vessel will proceed.  
(4) On the daily basis, the vessel  
(5) reported to the Amver position, course, and speed.  
(6) Also, the vessel reported deviations, all  
(7) deviations. There was only one deviation from the  
(8) intended route sent to the Amver on departure  
(9) Hamburg.  
(10) In the day of the 22nd, the vessel  
(11) confirmed her position with the latitude,  
(12) longitude, course, and speed 20 minutes before  
(13) 12:00 of local time. The same informing Amver  
(14) that the vessel is any time ready to render the  
(15) assistance to any one vessel.  
(16) Q: Amver, that's a system where members  
(17) feed in their locations and positions so that they  
(18) can be ready to assist people in peril, right?  
(19) A: Procedure in rendering the  
(20) assistance is that the operator —  
(21) Q: Wait a minute, Captain.  
(22) MR. WIEGEL: He's answering  
(23) the question.  
(24) MR. HEALEY: I withdraw the  
(25)

Page 66

*M. Kowalewski*

- (1) question because he's not answering  
(2) it.  
(3) Q: All I'm asking:  
(4) The idea behind Amver is so vessels  
(5) at sea can help each other; isn't that correct?  
(6) A: Yes.  
(7) Q: And you on the NORASIA ALYA was a  
(8) member of Amver?  
(9) A: Yes.  
(10) Q: So you were in an organization that  
(11) was meant to help people in trouble at sea,  
(12) correct?  
(13) A: Yes.  
(14) Q: And you got a message from the Coast  
(15) Guard that quoted, if you remember I'm reading the  
(16) Coast Guard record, quote, "All mariners are  
(17) requested to keep a sharp lookout for the vessel  
(18) in distress, assist if possible."  
(19) You got that message, didn't you,  
(20) from the Coast Guard?  
(21) A: Yes.  
(22) Q: All right.  
(23) It didn't ask you to standby or wait  
(24) for some special invitation, it said to you, you  
(25)

Page 67

*M. Kowalewski*

- (1) got this, "keep a sharp lookout and assist, if  
(2) possible"; isn't that correct?  
(3) You a member of Amver got a message  
(4) saying assist if possible?  
(5) MR. WIEGEL: Note my  
(6) objection.  
(7) Q: Do you agree?  
(8) MR. WIEGEL: Note my objection  
(9) to the form of the question.  
(10) Q: All right. Listen to me now. I  
(11) don't want you to go off on the speech. I  
(12) withdraw anything I said. Listen to me.  
(13) You did get a Coast Guard message,  
(14) correct?  
(15) A: Yes.  
(16) Q: And I said to you, the Coast Guard  
(17) message — you already agreed with me — requested  
(18) the vessels to keep a sharp lookout and assist, if  
(19) possible, correct? That was the substance of the  
(20) message you got.  
(21) A: I don't remember the contents of the  
(22) message.  
(23) Q: No, no, substance. Substance.  
(24) As you think back now, the message  
(25)

Page 68

(1) *M. Kowalewski*  
 (2) you got from the Coast Guard about an EPIRB, did  
 (3) it not give you notice that you were to keep a  
 (4) sharp lookout and assist, if possible?  
 (5) A: I don't remember the contents of the  
 (6) message.  
 (7) Q: All right, you said that twice and I  
 (8) changed the question. I didn't ask you the exact  
 (9) contents, I'm saying the substance. What — as  
 (10) you remember it, the substance. That message came  
 (11) in.  
 (12) Did it warn you that I should assist  
 (13) if possible. That's all I'm asking you.  
 (14) MR. WIEGEL: Asked and  
 (15) answered. Twice.  
 (16) A: Actually, can you repeat your  
 (17) question specifically in two, three words that I  
 (18) can understand what you want to say, because I  
 (19) don't understand now the chain of the questions.  
 (20) Q: All right. Okay. That's what I  
 (21) asked you to do at the beginning, tell me, right?  
 (22) A: Yes.  
 (23) Q: So that's good, you keep telling me  
 (24) that.  
 (25) We have agreed that you did receive

Page 69

(1) *M. Kowalewski*  
 (2) a message from the Coast Guard, correct?  
 (3) A: Yes.  
 (4) Q: And that that message was about an  
 (5) EPIRB showing somebody in distress, correct?  
 (6) A: Yes.  
 (7) Q: And all I'm saying, after you got  
 (8) that message, did you understand that the NORASIA  
 (9) ALYA should assist, if possible?  
 (10) A: I don't remember the text of the  
 (11) message so I cannot answer the question.  
 (12) Q: Okay. You can't remember whether or  
 (13) not you should have assisted.  
 (14) MR. WIEGEL: Note my  
 (15) objection. That's not his testimony.  
 (16) Q: The location of the EPIRB that you  
 (17) received on the Coast Guard message, okay, did you  
 (18) check to see whether or not that EPIRB was  
 (19) generally on the course that the NORASIA ALYA had  
 (20) just transversed?  
 (21) A: Yes, I — I checked the position and  
 (22) it was looking that it was inside the traffic  
 (23) safety line.  
 (24) Q: But the question wasn't that, the  
 (25) question was:

Page 70

(1) *M. Kowalewski*  
 (2) After you got the Coast Guard  
 (3) message, you checked the — those coordinates for  
 (4) the EPIRB, correct?  
 (5) A: Correct.  
 (6) Q: And you found out, see, when you  
 (7) checked your vessel records that the NORASIA ALYA  
 (8) had passed that point earlier?  
 (9) A: Yes.  
 (10) Q: Now, at that time, right — let me  
 (11) withdraw that.  
 (12) What time had the NORASIA ALYA  
 (13) passed those EPIRB coordinates?  
 (14) You got all the records, can you  
 (15) check them?  
 (16) A: 1238. Approximately. If I remember  
 (17) well.  
 (18) Q: That's fair enough, 1238.  
 (19) Again, you didn't say to me around,  
 (20) you gave me an exact time, correct? That's the  
 (21) way seaman think, they give exact time?  
 (22) A: But I reserve my rights that I can  
 (23) be wrong.  
 (24) Q: That's not it. Anybody can be  
 (25) wrong. Anybody can be right. The point is, as a

Page 71

(1) *M. Kowalewski*  
 (2) good seaman, you usually think in exact times.  
 (3) A: I make a calculation —  
 (4) Q: And you do it exactly?  
 (5) A: — and it shows 1238.  
 (6) Q: Okay. That's good.  
 (7) And at 1238, is it correct, see,  
 (8) that you had your whole deck crew out front doing  
 (9) work?  
 (10) A: I don't understand your question.  
 (11) Q: Okay. Going back to May —  
 (12) MR. WIEGEL: Are you  
 (13) withdrawing the question?  
 (14) MR. HEALEY: He didn't  
 (15) understand it. That's an answer.  
 (16) Sure, I'll withdraw it if he didn't  
 (17) understand it.  
 (18) Q: On May 22nd, right, at this time,  
 (19) 1238, okay, NORASIA ALYA is proceeding east to  
 (20) west heading into the Port of New York, correct?  
 (21) A: Okay.  
 (22) Q: Isn't it correct you said some of  
 (23) your deck crew was out on deck doing work, fixing  
 (24) lights, fixing lines?  
 (25) A: I think so. It was like that.



Page 72

*M. Kowalewski*

(1)  
(2) Q: Do you have your statement in front  
(3) of you? Check that again. We're looking at the  
(4) submission to — for the Liberian people, right?  
(5) MR. WIEGEL: Note my  
(6) objection.  
(7) Q: I want you to look at that and see  
(8) if it helps you remember about the crew.  
(9) I just asked you, during the time,  
(10) including 1238 on May 22nd, is it your  
(11) recollection the deck crew was working all day on  
(12) deck installing lighting and preparing the vessel  
(13) for an inspection?  
(14) Take your time and look for it.  
(15) MR. WIEGEL: Are you referring  
(16) to a specific place in his —  
(17) MR. HEALEY: You can count the  
(18) paragraphs, you can see it.  
(19) MR. WIEGEL: I think he's  
(20) looking at the sixth bulleted  
(21) paragraph, Captain.  
(22) MR. HEALEY: You're right.  
(23) (Pause.)  
(24) A: Yes.  
(25) Q: Okay. And is it correct that as far

Page 73

*M. Kowalewski*

(1) as you remember, the deck crew being out there in  
(2) the open had a chance, as you say, to monitor the  
(3) hull? Your words?  
(4) A: Yes.  
(5) Q: That means they could look over the  
(6) side and see the outside of the ship and see  
(7) whatever was going by; is that right?  
(8) A: Yes.  
(9) Q: And now, just based upon your  
(10) experience, I want you to give me an opinion here.  
(11) If the NORASIA ALYA had hit a  
(12) 42-foot fishing boat, cut it in half so that the  
(13) boat bounced back alongside the NORASIA ALYA, the  
(14) whole 800 feet, these crew guys would have had a  
(15) chance to see it, right?  
(16) A: Most probably, yes.  
(17) Q: That's what you're saying. They are  
(18) standing out there and they can see the hull?  
(19) A: Most probably, yes.  
(20) Q: Most probably, yes. Okay, that's a  
(21) fair answer because you're making — you're giving  
(22) me a judgment.  
(23) So if the NORASIA ALYA had hit —  
(24) MR. WIEGEL: You didn't ask —  
(25)

Page 74

*M. Kowalewski*

(1) you did ask for his opinion, that is a  
(2) judgment.  
(3) MR. HEALEY: That's correct.  
(4) Q: So that if in fact the NORASIA ALYA  
(5) had hit this fishing vessel the AVA CLAIRE and she  
(6) bounced down the side, most likely the crew would  
(7) have seen it?  
(8) A: Most probably, yes.  
(9) Q: And then the crew would have told  
(10) you, do you think, normally?  
(11) A: Certainly, yes.  
(12) Q: So if in fact you had hit the AVA  
(13) CLAIRE, if — I'm not saying you did — if in fact  
(14) you had hit the AVA CLAIRE, the crew would have  
(15) known and would have told you?  
(16) A: Yes.  
(17) Q: So when you got this EPIRB message,  
(18) you could have put two and two together, somebody  
(19) in distress, they're right back there where we  
(20) came through, and the crew says we hit somebody, I  
(21) better go look. Wouldn't that have been your  
(22) judgment?  
(23) MR. WIEGEL: Note my  
(24) objection.  
(25)

Page 75

*M. Kowalewski*

(1) A: If I remember well, several times I  
(2) ask the bosun who was working forward, do you see  
(3) something?  
(4) Q: I understand, Captain. This is a  
(5) lawyer. I move to strike because this is kind of  
(6) important. So stick with my question.  
(7) I'm just saying: Again, if the  
(8) crew — if you had hit the AVA CLAIRE, the crew  
(9) would have told you?  
(10) A: Yes, certainly.  
(11) Q: And if you knew that, see, and you  
(12) knew there was an EPIRB, see, you would have known  
(13) you had an obligation to do something, right?  
(14) If you —  
(15) A: I don't understand the question.  
(16) MR. WIEGEL: Mr. Healey, I'm  
(17) not sure I understand. Is this a  
(18) hypothetical question that you're  
(19) asking?  
(20) MR. HEALEY: It's subject to  
(21) proof. It's not a hypothetical. It's  
(22) if you hit the AVA CLAIRE, and we will  
(23) offer proof on that fact.  
(24) MR. WIEGEL: No, no, if —  
(25)



MACIEJ KO WALEWSKI  
September 12, 2007

FINK & CARNEY (800) 445-5111

Page 76

(1) M. Kowalewski  
(2) okay, let's go off the record a  
(3) minute.  
(4) (Discussion off the record.)  
(5) BY MR. HEALEY:  
(6) Q: If the crew, the people on deck who  
(7) could see the hull, knew that you had hit  
(8) something, they'd tell you?  
(9) A: Most probably, yes.  
(10) Q: Most probably.  
(11) And if they told you about the Coast Guard about an  
(12) received message from the Coast Guard about an  
(13) EPIRB, would you not have felt it was your  
(14) obligation to speed as fast as you could to that  
(15) EPIRB to assist?  
(16) A: I don't understand your question.  
(17) Q: Okay.  
(18) Again, do you still have your  
(19) statement in front of you?  
(20) A: Yes.  
(21) Q: Because I'm going to refer to that  
(22) again. Let me count paragraphs.  
(23) Let's count the dots down, Captain.  
(24) A: First page or second page.  
(25) Q: Still first page.

Page 77

(1) M. Kowalewski  
(2) Easiest way is I refer you to an  
(3) entry there that says: "At 1742 vessel anchored  
(4) north of Ambrose light." Okay?  
(5) Do you see the point I'm reading?  
(6) A: Yes.  
(7) Q: Right below that is what I want you  
(8) to explain for me. It says: "At 0247, UTC."  
(9) A: Correct.  
(10) Q: That's 2:47 a.m. in the morning?  
(11) A: Yes.  
(12) Q: On May 23rd?  
(13) A: Yes.  
(14) Q: Okay.  
(15) "Vessel received EGC point 642  
(16) message."  
(17) What is that?  
(18) A: It is that message. That is  
(19) original.  
(20) Q: I'm going to give it right back to  
(21) you. I just want you to tell me:  
(22) MR. HEALEY: Off the record a  
(23) minute. No off the record, between  
(24) you and I.  
(25) (Discussion off the record.)

(1) u wpru lon know somebodys in distress?  
(2) this section is setting forth the master's  
(3) point to which persons in distress should  
(4) place for help. Okay. This is the  
(5) record.  
(6) Q: I want you to go back to the  
(7) about the master's point to which persons  
(8) in distress should place for help.  
(9) A: Yes.  
(10) Q: Re EPIRB: How many times did you  
(11) receive a message from the Coast Guard about an  
(12) EPIRB? How many times did you receive a  
(13) message from the Coast Guard about an  
(14) EPIRB? How many times did you receive a  
(15) message from the Coast Guard about an  
(16) EPIRB? How many times did you receive a  
(17) message from the Coast Guard about an  
(18) EPIRB? How many times did you receive a  
(19) message from the Coast Guard about an  
(20) EPIRB? How many times did you receive a  
(21) message from the Coast Guard about an  
(22) EPIRB? How many times did you receive a  
(23) message from the Coast Guard about an  
(24) EPIRB? How many times did you receive a  
(25) message from the Coast Guard about an

(1) u wpru lon know somebodys in distress?  
(2) this section is setting forth the master's  
(3) point to which persons in distress should  
(4) place for help. Okay. This is the  
(5) record.  
(6) Q: I want you to go back to the  
(7) about the master's point to which persons  
(8) in distress should place for help.  
(9) A: Yes.  
(10) Q: Re EPIRB: How many times did you  
(11) receive a message from the Coast Guard about an  
(12) EPIRB? How many times did you receive a  
(13) message from the Coast Guard about an  
(14) EPIRB? How many times did you receive a  
(15) message from the Coast Guard about an  
(16) EPIRB? How many times did you receive a  
(17) message from the Coast Guard about an  
(18) EPIRB? How many times did you receive a  
(19) message from the Coast Guard about an  
(20) EPIRB? How many times did you receive a  
(21) message from the Coast Guard about an  
(22) EPIRB? How many times did you receive a  
(23) message from the Coast Guard about an  
(24) EPIRB? How many times did you receive a  
(25) message from the Coast Guard about an

Page 80

*M. Kowalewski*

- (1) right?
- (2) A: Yes.
- (3) Q: And this section also says: "If you
- (4) don't render assistance" — now listen, let's read
- (5) this together, it says — "that the master
- (6) should," quote, "inform the appropriate search and
- (7) rescue service accordingly."
- (8) Does — to you, does that mean that
- (9) if you don't go to assistance you should call the
- (10) search and rescue service and tell them?
- (11) A: No.
- (12) Q: What does it mean to you, Captain?
- (13) A: It means, in case I receive distress
- (14) message from the vessel in distress and I will not
- (15) proceed to that vessel in distress, for example,
- (16) when I received the mayday call —
- (17) Q: Well, finish your answer.
- (18) You said if you received this
- (19) message in distress, you explain to me what does
- (20) this mean?
- (21) A: If I will receive the message
- (22) directly from the person in distress —
- (23) Q: Okay, that's your understanding.
- (24) A: — and I will not proceed to the

Page 81

*M. Kowalewski*

- (1) site, then I will inform the EPIRB authority that
- (2) they can render assistance to person in distress.
- (3) That means for me.
- (4) Q: I understand what you're saying.
- (5) Given the set of facts that you
- (6) described, you understand that then you should
- (7) inform the authorities so they can take
- (8) appropriate action; is that correct?
- (9) A: We actually —
- (10) Q: Did you understand me?
- (11) A: I don't understand.
- (12) Q: Okay, see.
- (13) These last few words about which you
- (14) say set forth the master's duty. The last few
- (15) words, quote, "inform the appropriate search and
- (16) rescue service accordingly."
- (17) You've already explained to us the
- (18) circumstances under which that applies to you,
- (19) correct? You get the message?
- (20) A: Yes.
- (21) Q: What I want to know, if those
- (22) circumstances you've explained took place, you
- (23) call somebody; is that correct?
- (24) A: I don't understand your question.

Page 82

*M. Kowalewski*

- (1) Q: It says, you inform the appropriate
- (2) search and rescue service. Who's the appropriate
- (3) certain and rescue service that you would have
- (4) informed?
- (5) A: The proper rescue service is the
- (6) station anyone in the world which can coordinate
- (7) rescue coordination center.
- (8) Q: Okay.
- (9) Was there one available?
- (10) A: It can be there in Hong Kong. It
- (11) can be in Singapore. It can be in any place in
- (12) the world.
- (13) Q: I got you.
- (14) A: And it can be also the informed by
- (15) the red button of the sub B, sub F.
- (16) Q: What does that mean? Press a button
- (17) of some kind?
- (18) A: No.
- (19) Q: Tell me what it means?
- (20) A: Activate the communication with the
- (21) rescue communication center and talk to them.
- (22) Q: And all these things you've just
- (23) explained, you did none of those things on
- (24) May 22nd after — wait a minute, let me finish —

Page 83

*M. Kowalewski*

- (1) you did none of those things on May 22nd —
- (2) A: I don't understand your question.
- (3) MR. WIEGEL: Let him finish
- (4) the question.
- (5) MR. HEALEY: I didn't even
- (6) finish it. You'll never understand it
- (7) if you jump in in the middle.
- (8) THE WITNESS: Okay. Excuse
- (9) me.
- (10) Q: You have just explained to us, see,
- (11) that there were certain organizations that you
- (12) would notify — Hong Kong, wherever you were — if
- (13) in fact you were not going to render assistance,
- (14) correct?
- (15) And these organizations — you could
- (16) have notified somebody when you're down there
- (17) south of Montauk on May 22nd. There was somebody
- (18) you can reach tell them I'm not going to assist;
- (19) isn't that correct?
- (20) A: Still I don't understand your
- (21) question. I give an explanation.
- (22) Q: No, you don't understand it.
- (23) A: I'm standing on my explanation.
- (24) Q: Captain, let me stop you.

MACIEJ KOWALEWSKI  
September 12, 2007

MICHAEL STEPSKI v.  
THE M/V NORASIA ALYA

Page 84

(1) M. Kowalewski  
(2) A: Okay.  
(3) Q: And let me off the record or on the  
(4) record explain it.  
(5) When you don't understand it, you  
(6) can't give me an explanation. That makes sense.  
(7) So it's not fault. My question's no good —  
(8) A: Okay, I understand now.  
(9) Q: — so forget it.  
(10) Okay. Now, back to the Newport News  
(11) 25 May statement. Now, before I ask you,  
(12) This particular voyage that you were  
(13) on on May 22nd, 1904 — 2004 — this is a long  
(14) voyage, I had you out there for a hundred years —  
(15) that took you to Port Elizabeth, the last port  
(16) prior to Port Elizabeth was Hamburg; is that  
(17) correct?  
(18) A: Correct.  
(19) Q: Okay.  
(20) Before you sailed from Hamburg, did  
(21) you check around the keel, as you call it, or the  
(22) hull of the ship?  
(23) A: I don't remember.  
(24) Q: Would it be normal practice, say, to  
(25) take — go down and check the ship's, you know,

Page 85

(1) M. Kowalewski  
(2) the numbers, the rear — the draft?  
(3) A: We have sensors for reading the  
(4) draft and we are reading the draft that is, not  
(5) normal practice today.  
(6) Q: Okay. Then back when you left  
(7) Hamburg, it would not be normal practice to have  
(8) to walk around and look at the hull?  
(9) A: I don't understand your question.  
(10) Q: All I want to know is if somebody  
(11) got down before you sailed the NORASIA ALYA out of  
(12) Hamburg and actually walked around and checked the  
(13) condition?  
(14) A: I don't remember this.  
(15) Q: Okay. All right.  
(16) Now, at May 23rd, 2004, at Port  
(17) Elizabeth, at some point lawyers from the P&I came  
(18) on board?  
(19) A: Yes.  
(20) Q: Coast Guard came on board?  
(21) A: Yes.  
(22) Q: And in a — I think it was in a  
(23) police patrol boat —  
(24) A: Yes.  
(25) Q: — a check was made of the outside

Page 86

(1) M. Kowalewski  
(2) of the NORASIA ALYA?  
(3) A: Yes.  
(4) Q: Were you in the patrol boat —  
(5) A: Yes.  
(6) Q: — as they made this?  
(7) Who else was there as they made  
(8) this. Do you remember?  
(9) A: I don't remember.  
(10) Q: Did you notice scratch marks along  
(11) the length of the hull of the NORASIA ALYA at this  
(12) point?  
(13) A: I don't understand the question.  
(14) Q: Do you know what a scratch mark is?  
(15) A: I don't understand your question.  
(16) Q: No, no, new question.  
(17) Do you know what —  
(18) A: I know the meaning of the word  
(19) "scratch" —  
(20) Q: All right.  
(21) A: — but in this connection, I don't  
(22) understand your question.  
(23) Q: All right.  
(24) When you looked at the — going  
(25) around the patrol boat around the NORASIA ALYA,

Page 87

(1) M. Kowalewski  
(2) were you close enough to see the hull?  
(3) Could you see the hull? Did you  
(4) look at the hull of the big ship?  
(5) A: Yes.  
(6) Q: Did you see any marks on it?  
(7) A: A lot.  
(8) Q: A lot, okay. That's why I was  
(9) asking you about Hamburg.  
(10) Do you know whether those marks were  
(11) on the NORASIA ALYA when she sailed out of  
(12) Hamburg?  
(13) A: I don't remember.  
(14) Q: All right.  
(15) In other words, you don't know?  
(16) A: I don't remember.  
(17) Q: Did you hit anything between Hamburg  
(18) and Port Elizabeth that would put marks on the  
(19) hull?  
(20) A: I don't have such knowledge.  
(21) Q: Okay. Okay.  
(22) You might have? You don't know?  
(23) A: I don't have such knowledge.  
(24) Q: That's what I'm saying. What I'm  
(25) trying to understand, when you say I don't have



Page 88

*M. Kowalewski*

[1] such knowledge, you mean it is possible that you  
[2] hit something but you don't know about it?  
[3] You could have hit something?  
[4] A: I don't understand your question.  
[5] Q: You say — well, I don't understand  
[6] your answer when you say I don't have such  
[7] knowledge. Would you please explain what that  
[8] means?  
[9] A: You ask me if I hit something on the  
[10] way from Hamburg to Port Elizabeth.  
[11] Q: Yes.  
[12] A: My answer is, I don't have such  
[13] knowledge.  
[14] Q: Are you able to state that you did  
[15] not hit something?  
[16] A: I don't understand your question.  
[17] Q: Is it possible you hit something but  
[18] you don't know about it?  
[19] A: No.  
[20] Q: On the front of the boat on  
[21] May 23rd —  
[22] A: Excuse me.  
[23] Q: Yes.  
[24] A: I will make a correction to my

Page 89

*M. Kowalewski*

[1] answer.  
[2] I believe no.  
[3] Q: Okay. Okay. I understand your  
[4] correction.  
[5] On the 23rd in the patrol boat going  
[6] around, do you recall, see, that some foreign  
[7] object was found on the top of the bulbous bow?  
[8] A: I don't remember that.  
[9] Q: Well, look at your statement now. I  
[10] don't want you to read it, that's just to see  
[11] whether or not that helps you remember.  
[12] Is it correct that at about 1600  
[13] hours which is what, four in the afternoon? Is  
[14] that right?  
[15] A: Uh-huh.  
[16] Q: The joint inspection of the hull was  
[17] made from the police patrol boat; am I right?  
[18] A: Yes.  
[19] Q: And remember I was asking you if you  
[20] had any recollection of them picking up some  
[21] foreign substance off the bulbous bow?  
[22] Do you remember after you look at  
[23] what you said there, do you have any recollection?  
[24] A: If I put this in the statement,

Page 90

*M. Kowalewski*

[1] then it was most probably like this. But I don't  
[2] have at the moment knowledge. I don't remember  
[3] this any more.  
[4] Q: That's what I'm asking you, I'm not  
[5] asking you to read me that statement. I'm asking  
[6] after looking at that statement, does it bring a  
[7] memory back of finding something on the bulbous  
[8] bow?  
[9] A: After time pass, not all I can  
[10] recollect.  
[11] Q: You did know at one point, did you  
[12] not, that the inspection in the patrol boat found  
[13] a piece of fiberglass on the bulbous bow?  
[14] A: If I put in the statement?  
[15] Q: You did write that in the statement.  
[16] A: That was like this. But at the  
[17] moment I cannot go back to the time to remember to  
[18] give you the answer.  
[19] Q: If you wrote something down —  
[20] A: That is the fact.  
[21] Q: That's what I'm saying. You're  
[22] trying to tell the truth when you wrote it down?  
[23] A: Yes, it is the fact. But I don't  
[24] remember the details.

Page 91

*M. Kowalewski*

[1] Q: All right. I didn't ask you the  
[2] details.  
[3] Now thinking, never mind the  
[4] details, do you have a recollection of some kind  
[5] of fiberglass being found on the bulbous bow?  
[6] Think, I don't want you to read. Think. Do you  
[7] have a recollection of that happening?  
[8] A: No.  
[9] Q: No?  
[10] A: I don't remember the facts.  
[11] Details.  
[12] Q: I didn't ask you details.  
[13] Do you generally remember somebody  
[14] seeing something on the bow and taking it and  
[15] finding that it was fiberglass and giving some to  
[16] you and your attorneys. Do you remember that at  
[17] all?  
[18] A: I stated in the facts —  
[19] Q: No, Captain —  
[20] MR. WIEGEL: Let him answer  
[21] the question.  
[22] MR. HEALEY: I'm sorry. All  
[23] right.  
[24] MR. WIEGEL: You keep stopping



Page 92

*M. Kowalewski*

(1) him and he's trying to answer the  
 (2) question.  
 (3) MR. HEALEY: Please. I did  
 (4) stop him.  
 (5) MR. WIEGEL: Finish your  
 (6) answer, Captain. Go ahead and answer.  
 (7) A: I stated in my statement of facts  
 (8) many items which I cannot go back precisely to  
 (9) them today to issue the opinion, I'm afraid so,  
 (10) that's why if I don't have the memory regarding  
 (11) that point, I cannot keep discussion because I  
 (12) don't remember this.  
 (13) Q: All right. That makes it much  
 (14) easier.  
 (15) The statement of facts which you  
 (16) wrote out doesn't bring back any clear  
 (17) recollection in your mind; is that right?  
 (18) Some of this could be wrong, some is  
 (19) right?  
 (20) A: Important -- important contents,  
 (21) which I concern from the point of view of the  
 (22) navigation most probably I will remember. But  
 (23) small important details which I was not taking  
 (24) care so much I will not remember.  
 (25)

Page 93

*M. Kowalewski*

(1) I stated everything like we report  
 (2) now to the owners, because they were asking me  
 (3) about this. So I make my report only.  
 (4) MR. HEALEY: All right now,  
 (5) let's move on to something else.  
 (6) (Discussion off the record.)  
 (7) MR. HEALEY: Let's mark this  
 (8) as Kowalewski 1.  
 (9) (Whereupon, Photograph, was  
 (10) marked as Kowalewski Exhibit 1 for  
 (11) identification, as of this date.)  
 (12) Q: Here's the question.  
 (13) Captain, I've showed you a  
 (14) photograph marked with your name Kowalewski No. 1,  
 (15) and ask you, first of all, can you identify the  
 (16) large -- turn that towards me a minute, Captain.  
 (17) Can you identify at all on the  
 (18) left-hand side who that person is?  
 (19) A: No.  
 (20) Q: Okay. There's a ship beyond that  
 (21) person in that picture, right? Big ship?  
 (22) A: Yes.  
 (23) Q: Can you identify that ship?  
 (24) A: Yes.  
 (25)

Page 94

*M. Kowalewski*

(1) Q: What is it?  
 (2) A: NORASIA ALYA.  
 (3) Q: Okay.  
 (4) Again, still looking at Exhibit 1, I  
 (5) don't know what you want to call this. In the  
 (6) center there's some kind of scrape or... in the  
 (7) center of -- right on the center line looking at  
 (8) it, there's some kind of marks.  
 (9) A: Yes.  
 (10) Q: What are they? Is that a regular  
 (11) part of the ship? Is that printed on there? Is  
 (12) that something that happened as a scrape or bump  
 (13) in the rub; do you know?  
 (14) MR. WIEGEL: Object to the  
 (15) form.  
 (16) MR. HEALEY: Answer it for me.  
 (17) MR. WIEGEL: Can you answer  
 (18) the question?  
 (19) If you can answer the  
 (20) question, go ahead.  
 (21) A: Yes, I can answer the question.  
 (22) Q: What is it?  
 (23) A: Most probably what I see, they're  
 (24) signs of the sealing primer after removing top  
 (25)

Page 95

*M. Kowalewski*

(1) coat by tugboat fender. Most probably. I'm not  
 (2) sure.  
 (3) Q: Okay. But you're fairly sure of the  
 (4) fact that something has removed the top coat?  
 (5) A: The top coat is removed and I can  
 (6) see the sealing primer.  
 (7) Q: And is it fair to say you don't know  
 (8) exactly what caused it, it could have been a  
 (9) tugboat, it could have been something else? Is  
 (10) that fair?  
 (11) A: I don't understand your question.  
 (12) Q: You mentioned it might be a tugboat  
 (13) but you're not absolutely certain of that; are  
 (14) you? You didn't see a tugboat running this top  
 (15) coat off; did you?  
 (16) MR. WIEGEL: Objection to  
 (17) form.  
 (18) A: Most probably.  
 (19) Q: You're not listening to me.  
 (20) Did you see a tugboat running its  
 (21) lines against your vessel, the NORASIA ALYA to do  
 (22) this?  
 (23) A: I don't remember this.  
 (24) Q: Okay. All right.  
 (25)

Page 96

*M. Kowalewski*

- (1) MR. HEALEY: This will be  
(2) Kowalewski 2.  
(3) (Whereupon, Photograph, was  
(4) marked as Kowalewski Exhibit 2 for  
(5) identification, as of this date.)  
(6) A: This is another one, a picture.  
(7) Q: I'm showing you what we marked as  
(8) Kowalewski No. 2 and I'm saying again:  
(9) Does that show you the front bow,  
(10) the bulbous bow of the NORASIA ALYA?  
(11) A: Yes.  
(12) Q: If you know, is that what it looked  
(13) like on May 23rd pretty much when you made the  
(14) tour around it in the patrol boat?  
(15) A: Yes.  
(16) Q: Let me see that again, Captain. I  
(17) think that's all we've got to ask you.  
(18) One other thing.  
(19) Again, I'm showing you in the top of  
(20) the NORASIA ALYA you have a blue hull and there is  
(21) this red, what do you call this?  
(22) A: Antifouling. Or heavy draft area.  
(23) Q: There is some kind of light line  
(24) running horizontal with a curve.  
(25)

Page 97

*M. Kowalewski*

- (1) A: Yes.  
(2) Q: All right.  
(3) What's that? Do you know what  
(4) caused that?  
(5) A: I don't know.  
(6) Q: Okay.  
(7) Again, is that something rubbed off  
(8) like you described on picture one, something is  
(9) rubbed off some of the paint?  
(10) A: Most probably the action of the tug  
(11) tire fender, chains of the tire fenders.  
(12) Q: No argument, whatever it is is some  
(13) outside cause that rubbed along there.  
(14) Tug tire, fender, something?  
(15) A: I don't understand your question.  
(16) Q: That was caused by something rubbing  
(17) against probably the hull of the —  
(18) A: No.  
(19) Q: No? What was it caused by?  
(20) A: Most probably by tugboats  
(21) maneuvering with the vessel.  
(22) Q: I agree with you. What you're  
(23) saying is something, tugboat maneuvering with the  
(24) vessel, or a fender, anything —  
(25)

Page 98

*M. Kowalewski*

- (1) A: No.  
(2) Q: — something rubbed along there?  
(3) A: No.  
(4) Q: How did the tugboat do that?  
(5) A: The tugboat has a tire fender and is  
(6) pushing the vessel working the lines, and we have  
(7) a contact, so far as I know, as my knowledge is,  
(8) only with the tugboats.  
(9) Q: Okay. That's all I'm asking you.  
(10) That line shows the NORASIA ALYA was  
(11) in contact with something, and you think it was  
(12) the tugboat, right?  
(13) A: No.  
(14) Q: No?  
(15) That line was caused by contact  
(16) between the NORASIA ALYA and something outside it;  
(17) is that what you're telling me? And you think it  
(18) was a tugboat?  
(19) A: Most probably.  
(20) Q: Okay.  
(21) A: It is also the other option then  
(22) tug.  
(23) Q: What's the other option?  
(24) A: That other option is that applying  
(25)

Page 99

*M. Kowalewski*

- (1) of the paint system.  
(2) Q: Okay. All right.  
(3) A: Application of the paint system.  
(4) Q: Okay.  
(5) And this vessel have bow thrusters?  
(6) A: Has forward.  
(7) Q: Forward?  
(8) A: Thrusters, yes. We can see on the  
(9) capacity plan.  
(10) Q: Just stick with me because I'm  
(11) trying to find out.  
(12) You're talking about a tugboat  
(13) pushing the front. Is that normal when you have  
(14) bow thrusters to have tugboats on the bow?  
(15) A: Yes.  
(16) MR. HEALEY: Kowalewski No. 3.  
(17) (Whereupon, Picture of the bow  
(18) of the NORASIA ALYA, was marked as  
(19) Kowalewski Exhibit 3 for  
(20) identification, as of this date.) down  
(21) Q: Take a look at Exhibit No. 3,  
(22) Captain.  
(23) A: Yes.  
(24) Q: Again, can you identify that?  
(25)

MACIEJ KOWALEWSKI  
September 12, 2007

MICHAEL STEPSKI v.  
THE M/V NORASIA ALYA

Page 100

(1) *M. Kowalewski*  
(2) That's the bow of the NORASIA ALYA?  
(3) A: Yes.  
(4) Q: Okay. Let me give a quick look and  
(5) see if I have to ask you something else.  
(6) Again, on the very front, you see  
(7) the here (indicating) on the blue upper part of  
(8) the hull, there's all red stuff showing through.  
(9) What's that; do you know?  
(10) A: Most probably marks of the anchor  
(11) chain and application of the paint system.  
(12) Q: Okay. All right. All right.  
(13) Normally when the ship was finished  
(14) out of the shipyard, these marks weren't on it.  
(15) It was solid. They painted that thing all blue?  
(16) A: No.  
(17) Q: That thing was due to something  
(18) rubbing against it. And as you said, probably the  
(19) anchor chain, right?  
(20) A: Most probably the anchor chain and  
(21) the application of the paint system.  
(22) Q: What do you mean the application of  
(23) the paint system? When they paint it, this the  
(24) way they painted it; do you think?  
(25) A: May I give the explanation?

Page 101

(1) *M. Kowalewski*  
(2) Q: That's what I just asked you for.  
(3) A: The vessel was delivered in February  
(4) of 2004. In this time in Poland, is heavy winter.  
(5) However, in the place where the vessel was built,  
(6) the conditions are vary, very often building the  
(7) high moisture and the shipyard want to complete  
(8) the contract and they are painting sometimes on  
(9) the wet surface. What is the resulting, the paint  
(10) is going out. If I remember well, it was issued  
(11) in March a claim for a paint system.  
(12) Q: Did you have anything to do with  
(13) issuing a claim for a paint system?  
(14) THE WITNESS: Do we have a  
(15) claim for a paint?  
(16) MR. WIEGEL: No, just answer  
(17) the question.  
(18) Were you involved in issuing  
(19) the claim?  
(20) THE WITNESS: Excuse me?  
(21) Q: You are talking about a possible  
(22) claim because of the improper paint system?  
(23) A: Yes.  
(24) Q: Were you involved in preparing any  
(25) part of the submission of this claim?

Page 102

(1) *M. Kowalewski*  
(2) A: You mean preparing the claim, yes?  
(3) Q: Any part of it.  
(4) A: Yes, usually I write all claims.  
(5) Q: What did you do? I want to know.  
(6) That's kind of important. You're talking about  
(7) the fact that this brand new ship was delivered  
(8) and the paint was not satisfactory and a claim was  
(9) made.  
(10) Now normally there would be  
(11) paperwork on that, correct?  
(12) A: Usually the procedure is like this.  
(13) Q: Listen to me, I'm just saying to  
(14) you —  
(15) MR. WIEGEL: He's answering  
(16) the question.  
(17) Q: — normally there is paperwork, I  
(18) said. You don't just —  
(19) A: I don't understand the question.  
(20) Q: You have to submit a written claim.  
(21) A: Not only the written claim, there is  
(22) a chain of the facts.  
(23) Q: There is a written claim, though;  
(24) not only, but there is a written claim?  
(25) A: Yes.

Page 103

(1) *M. Kowalewski*  
(2) Q: Okay.  
(3) And all I want to know is, did you  
(4) do anything to prepare the written part of this  
(5) claim?  
(6) A: As I said, I prepare all the claims  
(7) and I sign them by signature.  
(8) Q: Do you remember preparing a claim  
(9) for this?  
(10) A: Yes, I remember.  
(11) Q: There was. So there is — there  
(12) should be at least you submitted a written  
(13) statement to support this claim against the Polish  
(14) shipyard?  
(15) A: In March.  
(16) Q: In March. March of 2004.  
(17) A: Yes. If I remember well, I'm not  
(18) so sure.  
(19) Q: If you don't remember well, stop  
(20) making these statements.  
(21) Do you remember being part of the  
(22) process of preparing a written claim that —  
(23) A: Yes. I remember.  
(24) Q: Okay.  
(25) So in the normal course, see, then



Page 104

*M. Kowalewski*

(1) the owners will have a paper record for this  
(2) claim.  
(3) A: Yes.  
(4) Q: Okay. All right.  
(5) A: For a paint system, not for that bow  
(6) ship damage of the paint.  
(7) Q: You're talking not for the damage.  
(8) Where's the damage shown on picture 3?  
(9) A: There is the damage of the paint  
(10) system here. Damage of the paint system on the  
(11) sealing primer here. And that is the —  
(12) definitely the damage of the peeling out  
(13) antifouling in these places. And we can see  
(14) the — one of the layers of the — of the primary.  
(15) Q: So you're saying, what you just  
(16) described is not part of the claim against the  
(17) shipyard?  
(18) Just answer the question before you  
(19) start explaining.  
(20) You have just pointed out on the  
(21) very bow here —  
(22) A: I don't understand your question  
(23) now.  
(24) Q: Because I haven't asked it yet.

Page 105

*M. Kowalewski*

(1) That's why you don't understand it.  
(2) A: Okay.  
(3) Q: You have just pointed out to us that  
(4) here on the blue painted section of the bow, you  
(5) said this was damage not due to the Polish  
(6) shipyard.  
(7) A: Hard to say. I cannot answer this  
(8) question because I don't know this answer for this  
(9) question.  
(10) Q: All right.  
(11) Can you tell us whether on this  
(12) picture, Kowalewski 3, that you can clearly say  
(13) some of this discoloration is due to the Polish  
(14) shipyard and some is due to damage? Can you tell  
(15) the difference?  
(16) A: Some of them, as I can see on that  
(17) photo, I must see the vessel. We must be on the  
(18) sand to give precisely the answer. I believe only  
(19) that it may be paint system damage due to not  
(20) proper paint application, or anchor chain  
(21) scratches. But I cannot be sure because I must  
(22) see the vessel to give you more explanation.  
(23) Q: You saw the vessel on May 23rd, did  
(24) you make a judgment as to what was due to anchor

Page 106

*M. Kowalewski*

(1) chains and what was due to the shipyard?  
(2) A: No.  
(3) Q: No.  
(4) After May 23rd, did you do any of  
(5) this paperwork to submit a claim for the —  
(6) A: Most probably not.  
(7) Q: So the claim — your input, your —  
(8) what you did with the claim was done before  
(9) May 23rd, 2004 —  
(10) A: Yes.  
(11) Q: — is that right? All right.  
(12) Do you got any copies of anything in  
(13) writing that you submitted to support this claim  
(14) against the shipyard?  
(15) A: In my filing system I don't have  
(16) such a claim.  
(17) Q: Well —  
(18) A: But I remember that I done such a  
(19) claim.  
(20) Q: Hold on a minute. You just said in  
(21) your filing system.  
(22) MR. WIEGEL: Let me just  
(23) object to the form of the question.  
(24) Because it's not clear. You mean him

Page 107

*M. Kowalewski*

(1) personally, or — you said you, you  
(2) have. You mean him personally?  
(3) Q: I think he meant — you understood I  
(4) was talking about you personally because you just  
(5) showed us, and you said not in your, and you were  
(6) demonstrating your personal file in front of you,  
(7) right?  
(8) A: Yes.  
(9) Q: You don't have it in there.  
(10) Is there any place where you,  
(11) Captain Kowalewski, not the company, has access to  
(12) any writings you, Captain Kowalewski, prepared to  
(13) support that the claim? Do they exist?  
(14) A: Well, please don't understand me  
(15) wrongly, but still I don't understand your  
(16) question what you're asking now.  
(17) Q: Okay.  
(18) You did tell us that you did prepare  
(19) some writings to support the owner's claim against  
(20) the Polish shipyard.  
(21) A: Yes.  
(22) Q: You did tell us that such a writing  
(23) is not in your personal file, which is right there  
(24) in front of you?

MACIEJ KOWALEWSKI

September 12, 2007

MICHAEL STEPSKI v.

THE M/V NORASIA ALYA

Page 108

*M. Kowalewski*

- [1] *M. Kowalewski*  
 [2] A: Yes.  
 [3] Q: And I'm saying, do you know whether  
 [4] the writings you prepared are accessible in the  
 [5] owner's file?  
 [6] A: Yes, they are for sure.  
 [7] Q: Okay.  
 [8] A: I mean owner's file —  
 [9] MR. WIEGEL: That's good. The  
 [10] answer was good.  
 [11] MR. HEALEY: Again, this will  
 [12] be Kowalewski 4 and 5. You might as  
 [13] well mark this.  
 [14] (Whereupon, Picture of the  
 [15] NORASIA ALYA, was marked as Kowalewski  
 [16] Exhibit 4 for identification, as of  
 [17] this date.)  
 [18] (Whereupon, Picture of the  
 [19] NORASIA ALYA, was marked as Kowalewski  
 [20] Exhibit 5 for identification, as of  
 [21] this date.)  
 [22] Q: I'm showing you what is 4,  
 [23] Kowalewski 4?  
 [24] A: Correct.  
 [25] Q: All right.

Page 109

*M. Kowalewski*

- [1] *M. Kowalewski*  
 [2] Can you identify that? Is that a  
 [3] fair picture of the NORASIA ALYA as it looked?  
 [4] A: Excuse me?  
 [5] Q: Does that look like the NORASIA ALYA  
 [6] as it was?  
 [7] A: It is like the NORASIA ALYA.  
 [8] Q: Okay. And that's pretty much what  
 [9] it looked like on May 23rd when you went around  
 [10] with the patrol boat; is that right?  
 [11] A: No.  
 [12] Q: What was the difference?  
 [13] A: The printout of the picture is  
 [14] showing the welding seem as a scratch.  
 [15] On the other picture, which I see  
 [16] during this inspection, that was not seen.  
 [17] Q: All right.  
 [18] Here's No. 5. Again —  
 [19] A: This welding seem is a reflection of  
 [20] the light.  
 [21] Q: That's No. 5. Again the first  
 [22] question is of course: Is that a picture of the  
 [23] NORASIA ALYA as it was over there on May 23rd at  
 [24] Port Elizabeth?  
 [25] A: Yes.

Page 110

*M. Kowalewski*

- [1] *M. Kowalewski*  
 [2] Q: Let me see that one a minute. Let  
 [3] me see if I got to ask you anything else.  
 [4] No, I don't have to ask you anything  
 [5] else.  
 [6] Put all those in the pile. We are  
 [7] finished with them.  
 [8] A: Which one?  
 [9] Q: All of them. Put them here out of  
 [10] your way.  
 [11] A: (Witness complying.)  
 [12] MR. HEALEY: Now this is 6.  
 [13] (Whereupon, Picture of the  
 [14] bulbous bow of the NORASIA ALYA, was  
 [15] marked as Kowalewski Exhibit 6 for  
 [16] identification, as of this date.)  
 [17] MR. HEALEY: 7.  
 [18] (Whereupon, Picture of the  
 [19] bulbous bow of the NORASIA ALYA, was  
 [20] marked as Kowalewski Exhibit 7 for  
 [21] identification, as of this date.)  
 [22] Q: Take a look at the first one in  
 [23] front of you, No. 7. All I want you to do is tell  
 [24] me is that the bulbous bow of the NORASIA ALYA?  
 [25] A: Correct, bulbous bow.

Page 111

*M. Kowalewski*

- [1] *M. Kowalewski*  
 [2] Q: No. 8; isn't it?  
 [3] A: 7.  
 [4] Q: That is also the same bulbous bow  
 [5] but a closer up picture, right?  
 [6] A: Yes.  
 [7] Q: We go to No. 6.  
 [8] Do you remember is that what —  
 [9] No. 6?  
 [10] A: Yes.  
 [11] Q: That's it.  
 [12] A: This one? Yes.  
 [13] Q: Is that your recollection of what  
 [14] the bulbous bow looked like when you were in the  
 [15] patrol boat, or don't have you one?  
 [16] A: Most probably.  
 [17] Q: Okay.  
 [18] Same goes for No. 7 that's how you  
 [19] remember the bulbous bow?  
 [20] A: Yes, I remember.  
 [21] Q: Now, I want to get something about  
 [22] your background, generally speaking.  
 [23] How old are you?  
 [24] A: I was born 1955.  
 [25] Q: What day?

Page 112

Page 114

(1) *M. Kowalewski*  
(2) A: 30 of September.  
(3) Q: What?  
(4) A: 30th of September.  
(5) Q: 13th?  
(6) THE COURT REPORTER: 30th.  
(7) Q: Oh, I thought tomorrow was your  
(8) birthday. All right.  
(9) And you were born in Poland?  
(10) A: I was born in Poland.  
(11) Q: Are you still a Polish citizen.  
(12) A: I'm Polish citizen.  
(13) Q: At the present time, do you hold any  
(14) maritime licenses?  
(15) A: I hold.  
(16) Q: What kind?  
(17) A: Master mariner.  
(18) Q: Who has issued that?  
(19) A: Government of Poland.  
(20) Q: Do you hold — is that what, a  
(21) Captain's license unlimited?  
(22) A: Master mariner's license unlimited.  
(23) Q: Okay.  
(24) Have you got a master mariner's  
(25) license from any other source?

Page 113

(1) *M. Kowalewski*  
(2) A: No. Only from Poland.  
(3) Q: That's fine. Not surprising, I'm  
(4) just asking you.  
(5) How long have you had a master's  
(6) license?  
(7) A: Since 28 of January 1993.  
(8) Q: Okay.  
(9) And since 1993 up 'til now, you've  
(10) been sailing all the time?  
(11) A: Yes.  
(12) Q: I mean, that's your occupation. You  
(13) don't have any other job some place; do you?  
(14) A: No.  
(15) Q: I mean, you're a master mariner.  
(16) You sail ships.  
(17) A: Yes.  
(18) Q: That's how you make your living.  
(19) A: Yes.  
(20) Q: What training, if any, did you  
(21) receive say — withdraw that.  
(22) Tell me about your general  
(23) education. How far did you go? Finish high  
(24) school?  
(25) A: I finish the primary school, eight

(1) *M. Kowalewski*  
(2) years. Deep see fishery college five years.  
(3) Merchant academy five years.  
(4) In the period of the school, I was  
(5) doing the sea practice.  
(6) Q: Okay. And since 1993 when you got  
(7) the master's license, how many ships have you  
(8) commanded?  
(9) A: I don't remember, but I can take a  
(10) look in the record.  
(11) Q: If you have a list that is good.  
(12) (Pause.)  
(13) A: Eighteen ships with the total only  
(14) sea service, 120 months — over 120 months.  
(15) Q: One hundred months —  
(16) A: Over 120 months of the sea service.  
(17) Q: That's your whole sea record there?  
(18) A: Yes.  
(19) Q: Save a lot of questioning, let me —  
(20) can I look at that? Do you have a copy?  
(21) MR. WIEGEL: That's what I  
(22) gave you yesterday.  
(23) MR. HEALEY: Let me take a  
(24) quick look at that.  
(25) Q: Let me go over this quickly. I have

Page 115

(1) *M. Kowalewski*  
(2) your record. This shows your complete sea going  
(3) record, all the ships?  
(4) A: Yes.  
(5) Q: And all — and your various when you  
(6) were captain or anything else. They're all on  
(7) these records you supplied?  
(8) A: Yes.  
(9) Q: Okay. That's fine.  
(10) Now, am I correct that the second  
(11) page that shows — the first page shows you were  
(12) sailing, you know, chief officer, but the second  
(13) page pretty much you're always the master,  
(14) correct?  
(15) A: Yes.  
(16) Q: So then you started the master of  
(17) the container vessel M/V BUBINGA?  
(18) A: No.  
(19) Q: Tell me what your first — correct  
(20) me.  
(21) A: Position 30.  
(22) Q: I got you. On the other page.  
(23) First time you were master of the  
(24) refer vessel M/V AQUILLA?  
(25) A: Correct.



MACIEJ KOWALEWSKI

September 12, 2007

MICHAEL STEPSKI v.  
THE M/V NORASIA ALYA

Page 116

[1] *M. Kowalewski*  
 [2] Q: That's your first master's job.  
 [3] Okay?  
 [4] A: Correct.  
 [5] Q: As I note now, is it correct, on  
 [6] your service record, as you note it, position 30  
 [7] is your first master. You have now positions 30  
 [8] through 47 and you were always a master?  
 [9] A: Yes.  
 [10] Q: Now, let me just... Okay. The one  
 [11] we're looking at, position 43, master of the  
 [12] NORASIA ALYA.  
 [13] Now, who was your employer, what  
 [14] company? You can name anybody. I want to know  
 [15] whether you have been working for this company,  
 [16] not only the NORASIA ALYA, for any period of time  
 [17] before?  
 [18] A: Person paying the money is the  
 [19] registered owner.  
 [20] Q: What?  
 [21] A: Person paying the money, registered  
 [22] owner like in ship's particulars.  
 [23] ALENA SCHIFFFAHRTSGESELLSCHAFT is the  
 [24] person who pays the money.  
 [25] Q: Had you worked for that company

Page 117

[1] *M. Kowalewski*  
 [2] prior to the NORASIA ALYA?  
 [3] A: I don't understand the question.  
 [4] Q: You just — I asked you and you gave  
 [5] me the name of — never mind — the NORASIA ALYA,  
 [6] you gave me the name of the ship company?  
 [7] A: Excuse me, may I give a little bit  
 [8] longer explanation?  
 [9] Q: Sure, you can. Let's get it clear.  
 [10] A: The person who pays the money it is  
 [11] the person who employs me.  
 [12] Q: Okay. Stop right there.  
 [13] Who is the person who paid the money  
 [14] on the NORASIA ALYA?  
 [15] A: Registered owner of NORASIA ALYA is  
 [16] in ship's particulars.  
 [17] Q: Is in ship's particulars?  
 [18] A: It is.  
 [19] Q: That's not the name; is it? What's  
 [20] the name of the fellow who signed your checks?  
 [21] Who paid you?  
 [22] A: May I give a longer —  
 [23] Q: Let me cut through it. All I want  
 [24] to know is, that you were working, see, for a  
 [25] company when you were on the NORASIA ALYA.

Page 118

[1] *M. Kowalewski*  
 [2] How long had you been working with  
 [3] that same company before joining the NORASIA ALYA?  
 [4] A: I don't understand your question.  
 [5] Q: Maybe I give up. It's not a hard  
 [6] one.  
 [7] MR. WIEGEL: Captain, who  
 [8] employed you when you were on board  
 [9] the NORASIA ALYA?  
 [10] THE WITNESS: Who prepared the  
 [11] documents as agent.  
 [12] MR. WIEGEL: No. No.  
 [13] Who were you getting your  
 [14] paycheck from?  
 [15] THE WITNESS: You mean the  
 [16] registry?  
 [17] MR. WIEGEL: Yes, who you did  
 [18] get your wages from?  
 [19] A: Doehle Personal Management.  
 [20] Q: So let's call them Doehle, all  
 [21] right?  
 [22] A: Yes.  
 [23] Q: Doehle was paying you when you were  
 [24] on the NORASIA ALYA.  
 [25] On any ships before the NORASIA

Page 119

[1] *M. Kowalewski*  
 [2] ALYA, was Doehle paying you? This time the first  
 [3] time you worked for Doehle?  
 [4] A: Doehle organization employs me since  
 [5] 1970 — 1997.  
 [6] Q: Okay. That's it.  
 [7] So since 1997 to now, you were  
 [8] working for the Doehle organization; am I right?  
 [9] I said since you told me 1997 up  
 [10] 'til now, you've been working for the Doehle  
 [11] organization?  
 [12] A: Yes.  
 [13] Q: On various of their ships, right?  
 [14] A: Yes.  
 [15] Q: Okay.  
 [16] Had you ever sailed on a — well,  
 [17] withdraw that.  
 [18] The NORASIA ALYA was a container  
 [19] ship, right?  
 [20] A: Yes.  
 [21] Q: And as you had indicated earlier  
 [22] when you were talking about some of those  
 [23] pictures, it was brand new just out of the Polish  
 [24] shipyard?  
 [25] A: Yes.

Page 120

*M. Kowalewski*

- (1)  
(2) **Q:** Had you sailed on vessels that were  
(3) of the same type as the NORASIA ALYA before you  
(4) joined her?  
(5) **A:** Yes.  
(6) **Q:** Okay.  
(7) What the ones were the same? What  
(8) other vessels before the NORASIA ALYA were the  
(9) same type?  
(10) **A:** Well actually, do you ask me about  
(11) the sister vessels or type of the vessels?  
(12) Because I don't understand your question.  
(13) **Q:** All right. I'm not asking about sea  
(14) service, I got it in your records.  
(15) **THE COURT REPORTER:** He said  
(16) sister vessel.  
(17) **MR. HEALEY:** I'm sorry.  
(18) **Q:** Let's do it then — easy enough.  
(19) Fine. I'll follow what you said.  
(20) Had you served on any sister ves —  
(21) have you ever served on any sister vessels of the  
(22) NORASIA ALYA?  
(23) **A:** Yes.  
(24) **Q:** All right.  
(25) Tell me what vessels and when?

Page 121

*M. Kowalewski*

- (1) **A:** You can start from the position 43  
(2) to the position 47.  
(3) **Q:** All right. I got it. That's — oh,  
(4) we're starting 43 is the NORASIA ALYA.  
(5) **A:** From 43 to 47.  
(6) **Q:** I understand that.  
(7) **A:** They are sister vessels, the same.  
(8) **Q:** All right. All right.  
(9) When — you just said, did I hear  
(10) you correct, the sister vessel —  
(11) **A:** There's a difference, type or sister  
(12) vessel.  
(13) **Q:** I know, you just told me sister, and  
(14) what you're saying is the sister — they're pretty  
(15) much similar ships?  
(16) **A:** Exactly the same.  
(17) **Q:** Okay.  
(18) Now, you told me about the sister  
(19) vessels.  
(20) Had you served on vessels of the  
(21) same type, the words you used before, you joined  
(22) the NORASIA ALYA?  
(23) **A:** Yes.  
(24) **Q:** Okay.

Page 122

*M. Kowalewski*

- (1) What are those vessel of the same  
(2) type?  
(3) **A:** Starting from the position — they  
(4) will be the different size, but the type will be  
(5) the same.  
(6) **Q:** All right. Tell me about it.  
(7) **A:** Thirty-four to vessel — to NORASIA  
(8) ALYA. From the 34 you can start.  
(9) **Q:** Okay. So from 34 right up to 43,  
(10) vessels of the same type which you have already  
(11) indicated.  
(12) **A:** Type, but not the sister vessels.  
(13) **Q:** It's clear, one sister vessels only  
(14) after the NORASIA ALYA did you serve on sister  
(15) vessel?  
(16) **A:** Yes.  
(17) **Q:** Before the NORASIA ALYA from vessel  
(18) number 33, you would be serving on the same type  
(19) and the type as you already indicated that can be  
(20) different sizes and stuff, right?  
(21) Now, the navigational gear that was  
(22) on the NORASIA ALYA, what did it consist of?  
(23) **A:** As per attached list, I can read  
(24) everything.  
(25)

Page 123

*M. Kowalewski*

- (1) **Q:** Let me just see it. Don't read it  
(2) all. I just want to — show me what you've got  
(3) and we'll take it from there.  
(4) **MR. WIEGEL:** Are we going to  
(5) mark that as an exhibit?  
(6) **MR. HEALEY:** Yes.  
(7) **MR. WIEGEL:** Okay.  
(8) (Whereupon, List of  
(9) navigational gear, was marked as  
(10) Kowalewski Exhibit 8 for  
(11) identification, as of this date.)  
(12) **Q:** And now going all through the  
(13) navigational gear, you've given us a list that  
(14) we'll mark as Exhibit 8 as to, as you say, the  
(15) gear on board.  
(16) Were you fully familiar with the  
(17) operation of all this gear that is shown on what  
(18) will be Exhibit 9?  
(19) **A:** I believe, yes.  
(20) **Q:** All right.  
(21) Had you taken courses, gone to  
(22) school, got any special training in any of this  
(23) gear?  
(24) **A:** For all required by regulation.  
(25)

MACIEJ KOWALEWSKI  
September 12, 2007

MICHAEL STEPSKI v.  
THE M/V NORASIA ALYA

Page 124

*M. Kowalewski*

[1] Q: And tell me about that a little bit.  
[2] Tell me about when you went, where you went, and  
[3] the subject of your studies?

[4] A: During my studying Merchant Naval  
[5] Academy from '75 to '81, in that period, I don't  
[6] remember exactly, I was taking the radar observer  
[7] course.

[8] In fishery college, if I remember  
[9] well in 1974, I was taking the unlimited, the  
[10] course of the unlimited radio operator.

[11] Later on, if I remember well, in  
[12] 1987, I attended ARPA course.

[13] Q: Stop right there. This was '97 you  
[14] said?

[15] A: Nineteen — '87.

[16] MR. WIEGEL: 1987.

[17] Q: I got you. All right.

[18] I'll interrupt occasionally, but you  
[19] can continue.

[20] 1987 ARPA, just give me a little  
[21] detail where you took it and what did it consist  
[22] of?

[23] A: Merchant Navy Academy in Szczecin.

[24] Q: All right. How long a course?

Page 125

*M. Kowalewski*

[1] A: If I remember well, it was a couple  
[2] of days.

[3] Q: Now, would you continue?

[4] A: During the chief officer's course,  
[5] which I done most probably if I remember well, in  
[6] 1988. I was attending the bridge stimulator, but  
[7] it was not certified, it was the introduction, it  
[8] was the — the part of the course.

[9] Later on again it was the bridge  
[10] simulator when I was making master's license in  
[11] 1983 or 1982.

[12] And later on, I done, of course, in  
[13] the period of the time the GMDSS license, general  
[14] operator GC, GMDSS license.

[15] Q: Give me the dates as you go along.

[16] A: It was several times done that  
[17] course because the Polish legislation not prepared  
[18] the document to be issued. So we done one time  
[19] the course, and later on when the Polish  
[20] Parliament prepared the law, it was looking that  
[21] not everything was covered, and we have to attend  
[22] again. I cannot now remember precisely the dates.  
[23] But the evidence of that is the license which I'm  
[24] holding. I mean the certificate.

Page 126

*M. Kowalewski*

[1] GMDSS, ARPA, simulators, and, of  
[2] course, also SOLAS courses, survival techniques,  
[3] fast rescue boats. Rescue boats.

[4] Q: Just navigation.

[5] A: Okay, sorry.

[6] Bridge management, ECDIS course. I

[7] done the bridge management in Varderminder

[8] (phonetic) in the ViSmart (phonetic) Merchant

[9] Naval Academy, and ECDIS course I did in Northern

[10] Hamburg.

[11] Q: Now, I want to now get — I'm

[12] getting the crew list, if you have the crew list,

[13] you can take a look there.

[14] A: Yeah, I have.

[15] Q: As you've told me about your

[16] training, I want to know now, the crew list you're

[17] looking at shows us who the officers were on

[18] May 22nd, 2004?

[19] A: Yes.

[20] MR. WIEGEL: Off the record a

[21] minute.

[22] (Discussion off the record.)

[23] BY MR. HEALEY:

[24] Q: Captain, take a look, you have the

Page 127

*M. Kowalewski*

[1] crew list in front of you?

[2] A: Yes.

[3] Q: Now, to cut this short, you heard

[4] Mr. Wiegel and I talking there were two lists,

[5] international and US, but same men on each?

[6] A: Composition of the crew same.

[7] MR. HEALEY: Okay. Off the

[8] record.

[9] (Discussion off the record.)

[10] MR. HEALEY: Back on the

[11] record.

[12] Let's mark that as Exhibit 9.

[13] (Whereupon, Crew list, was

[14] marked as Kowalewski Exhibit 9 for

[15] identification, as of this date.)

[16] MR. HEALEY: Let's also mark

[17] the crew list.

[18] (Whereupon, Crew list, was

[19] marked as Kowalewski Exhibit 10 for

[20] identification, as of this date.)

[21] BY MR. HEALEY:

[22] Q: We're both looking at

[23] Exhibit No. 10, the crew list.

[24] Quickly I will just like you to give



Page 128

Page 130

[1] *M. Kowalewski*  
[2] me some background on those men.  
[3] First of all, we go to the chief  
[4] officer. What's his name?  
[5] A: Grabsztunowicz, Piotr.  
[6] Q: How do you pronounce his first name?  
[7] MR. WIEGEL: Peter.  
[8] A: Grabsztunowicz.  
[9] Q: But it's P-I-O-T-R?  
[10] A: Piotr. Peter.  
[11] Q: All right now, the chief officer,  
[12] had you ever sailed with him before?  
[13] A: Never.  
[14] Q: All right.  
[15] When he came on board —  
[16] A: On the shipyard during the ship  
[17] construction.  
[18] Q: And did you have any opportunity  
[19] prior to May 22nd, 2004 to judge his abilities?  
[20] A: Yes.  
[21] Q: All right.  
[22] Was he fully checked out in the  
[23] navigational systems aboard the ship?  
[24] A: Yes.  
[25] Q: Now, in the use of the radar, I'm

Page 129

[1] *M. Kowalewski*  
[2] making that simple, I know it's somewhat of a more  
[3] complicated system, but in use of the radar, were  
[4] any of your officers, and in looking at this I'm  
[5] only referring to either chief officer, second  
[6] officer, or third officer, or any of those  
[7] officers specially trained in the use of radar  
[8] that was on the NORASIA ALYA?  
[9] A: If I remember well, there were  
[10] Grabsztuowicz was sailing on the sister vessel, so  
[11] he was using the same nautical equipment.  
[12] Q: I understand what you're saying, but  
[13] I'm trying to a little more precise.  
[14] Did you know, did you check to see  
[15] whether any of these men, because I'm going for  
[16] all three of them, chief officer, second officer,  
[17] third officer, had taken some kind of special  
[18] training course or were particularly good at the  
[19] use of the radar?  
[20] A: Excuse me, I don't understand the  
[21] question.  
[22] MR. WIEGEL: Note my objection  
[23] to the form.  
[24] Q: Anybody who was specially trained,  
[25] any of your officers who were specially trained in

[1] *M. Kowalewski*  
[2] the use of —  
[3] A: Everyone was holding ARPA  
[4] certification.  
[5] Q: I got you.  
[6] Did you check whether anyone had any  
[7] further experience with the type of radar system  
[8] on the NORASIA ALYA?  
[9] A: Yes.  
[10] Q: And you told me the chief officer  
[11] had been on a ship you knew beforehand that had  
[12] similar system?  
[13] A: Sister ship.  
[14] Q: Okay. How about the second officer  
[15] whose name I believe is Jankowski?  
[16] A: Jankowski, Zbigniew.  
[17] Q: What did you know about his  
[18] experience with the type of radar on the NORASIA  
[19] ALYA?  
[20] A: He was an ARPA certificate. I don't  
[21] remember on which vessel he was sailing before,  
[22] but he had sufficient knowledge about the — of  
[23] the system.  
[24] Q: All I'm asking you —  
[25] A: Sufficient experience from the other

Page 131

[1] *M. Kowalewski*  
[2] ships to operate radar on the NORASIA ALYA.  
[3] Q: You told me the chief officer had  
[4] been working ships with the same system.  
[5] Do you know whether your second  
[6] officer had worked the same system on earlier  
[7] ships, if you know?  
[8] A: Most probably, yes, because he had  
[9] sufficient knowledge.  
[10] Q: You say most probably. Okay.  
[11] Now, the third officer Kalmneski  
[12] (phonetic), is that not your —  
[13] A: Kalmneski, Adrian.  
[14] Q: Okay.  
[15] Again, just generally, do you know  
[16] whether he was fully — was he experienced with  
[17] the type of radar system?  
[18] A: I know this. He was fully  
[19] experienced.  
[20] Q: How do you know this?  
[21] A: I was sailing on the other vessel  
[22] together with him and the older version of the  
[23] equipment was installed and he had the good  
[24] knowledge.  
[25] Q: I think I — did I pick — you had

MACIEJ KOWALEWSKI  
September 12, 2007

MICHAEL STEPSKI v.  
THE M/V NORASIA ALYA

Page 132

[1] *M. Kowalewski*  
[2] sailed with Mr. Kalminecki on other ships?  
[3] A: Yes.  
[4] Q: Okay.  
[5] A: I sailed with him four ships.  
[6] Q: Okay. Okay.  
[7] A: Four ships.  
[8] Q: Had you sailed with the chief  
[9] officer or the second officer before?  
[10] A: No.  
[11] Q: Did you have any — I guess we can  
[12] call — did you have any occasion where you had to  
[13] log any of these officers for failure to carry out  
[14] their duties?  
[15] A: Only second officer Jankowski,  
[16] because he was not calling the master when he  
[17] supposed to do this.  
[18] Q: All right. You did — we don't have  
[19] to go into great detail.  
[20] On May — on the deck log entry of  
[21] May 22nd, 2004, that's where you made a log entry  
[22] concerning Jankowski's conduct; is that right?  
[23] You can look at it, if you want.  
[24] A: Yes, I know that entry.  
[25] Q: Okay.

Page 133

[1] *M. Kowalewski*  
[2] A: And the entry, the reason of the  
[3] entry was to reflect him to do this what he's  
[4] supposed to do.  
[5] Q: All I'm trying to get from you is,  
[6] that is the only entry in the whole log —  
[7] A: Regarding —  
[8] Q: — concerning Jankowski?  
[9] A: Only that one.  
[10] Q: Now, while we're still on the  
[11] officers in general, these three officers, chief,  
[12] second, third, they stand sea watches; do they  
[13] not?  
[14] A: They do this.  
[15] Q: And again, just talking about  
[16] NORASIA ALYA during this May 2004 period, when at  
[17] sea, how were the watches broken up for the  
[18] officers; what were they?  
[19] A: The third officer from zero —  
[20] sorry, from 08 to 12. Second officer from 12 to  
[21] 16. And chief officer from 16 to 2000. From 2000  
[22] to 24, third officer. From 00 to 04, second  
[23] officer. From 04 to 08, chief officer.  
[24] Q: That brought us all around?  
[25] A: All around the clock.

Page 134

[1] *M. Kowalewski*  
[2] Q: In the list that you referred to,  
[3] your deck log —  
[4] A: Yes.  
[5] Q: — okay.  
[6] MR. WIEGEL: Which one?  
[7] Q: I'm going to tell him. Specifically  
[8] that which covers May 22nd, 2004.  
[9] MR. WIEGEL: Are we going to  
[10] mark this, mark the logbook? I'd like  
[11] to make sure we mark the logbook  
[12] because we've been referring to them.  
[13] I think it's appropriate to mark them.  
[14] MR. HEALEY: I think so. So  
[15] you want to — what do we have, one  
[16] and two? Do you want to mark them  
[17] now?  
[18] MR. WIEGEL: Sure. We can  
[19] mark this copy. It has the Bates  
[20] numbers on them.  
[21] MR. HEALEY: Okay. That's  
[22] number II. This is number I.  
[23] (Whereupon, Logbook, was  
[24] marked as Kowalewski Exhibit 11 for  
[25] identification, as of this date.)

Page 135

[1] *M. Kowalewski*  
[2] (Whereupon, Logbook, was  
[3] marked as Kowalewski Exhibit 12 for  
[4] identification, as of this date.)  
[5] Q: You've got that logbook entry page?  
[6] A: Yes.  
[7] Q: Okay. Now, May 22nd, 2004 covers  
[8] part of the NORASIA ALYA passage from Hamburg to  
[9] Port Elizabeth, New York; is that correct?  
[10] A: Yes, page 3 of the logbook regards  
[11] the passage — one of the dates of the passage.  
[12] Q: That's what I'm saying, just one of  
[13] the days.  
[14] But encompasses the voyage that  
[15] started in Hamburg?  
[16] A: Yes.  
[17] Q: Its first stop after Hamburg. Its  
[18] first call was Port Elizabeth, correct?  
[19] A: Correct.  
[20] Q: This was an uninterrupted trip from  
[21] Hamburg to Port Elizabeth?  
[22] A: Correct.  
[23] Q: And at some point on that trip,  
[24] shortly before May 22nd, 2004, did the vessel  
[25] enter — what's the term — enter a safety

**MICHAEL STEPSKI v.  
THE M/V NORASIA ALYA**

**MACIEJ KOWALEWSKI**

**September 12, 2007**

Page 136

Page 138

(1) **M. Kowalewski**  
(2) fairway, Nantucket Safety Fairway, from passage  
(3) from east to west into New York Harbor?  
(4) **A:** Yes, the vessel was navigating  
(5) safety fairway.  
(6) **Q:** That's what I'm saying.  
(7) Because I asked you at some point  
(8) you entered — the safety fairway doesn't start in  
(9) Hamburg; does it?  
(10) **A:** The safety fairway starts near the  
(11) US coast.  
(12) **Q:** All right.  
(13) And is there — do you have any  
(14) document, is there any entry to show when the  
(15) NORASIA ALYA entered the safety fairway?  
(16) **A:** Yes.  
(17) **Q:** Okay. First of all, tell me when it  
(18) entered the safety fairway?  
(19) **A:** I don't remember this.  
(20) **Q:** Okay. But you said there would be  
(21) an entry some place when you entered it?  
(22) **A:** Identification of position.  
(23) **Q:** When you say identification of  
(24) position, then there are coordinates?  
(25) **A:** Fact.

Page 137

(1) **M. Kowalewski**  
(2) **Q:** There are —  
(3) **A:** Time and position.  
(4) **Q:** There are coordinates given as to  
(5) where this safety fairway begin?  
(6) **A:** Correct. Yes.  
(7) **Q:** So if you look at that and see that  
(8) your vessel is at those coordinates, you're now in  
(9) the safety fairway?  
(10) **A:** Correct.  
(11) **Q:** And then — at the May 22nd, at  
(12) whatever the time would be, 12 midnight, the  
(13) change of day, were you in the safety fairway?  
(14) **A:** I don't understand the question.  
(15) **Q:** May 22nd, 2004, okay, that day  
(16) starts at 0000?  
(17) **A:** Correct.  
(18) **Q:** Okay.  
(19) At 0000 on May 22nd, 2004, was the  
(20) NORASIA ALYA in the safety fairway?  
(21) **A:** I don't know.  
(22) **Q:** Is there any way by looking at that  
(23) that you can tell me?  
(24) **A:** No.  
(25) **Q:** At noon on May 22nd, 2004, was the

(1) **M. Kowalewski**  
(2) NORASIA ALYA in the safety fairway?  
(3) **A:** Yes.  
(4) **Q:** Okay.  
(5) And so you say "yes". How do you  
(6) know?  
(7) **A:** Because I was on the bridge and I  
(8) remember that. But when the vessel was entering  
(9) the safety fairway, I was also on the bridge but I  
(10) don't remember the time.  
(11) **Q:** Okay. All I'm saying is —  
(12) **A:** But now I have a chart and I can  
(13) recall from that.  
(14) **Q:** I'd like you to do that. Does the  
(15) chart show when you entered the safety fairway?  
(16) **A:** The position of the chart is 7:00,  
(17) but the — it happened entering the safety fairway  
(18) was about 11 miles before, so approximately at  
(19) 0630.  
(20) **Q:** On May 22nd?  
(21) **A:** I have to check.  
(22) (Pause.)  
(23) **A:** Yes.  
(24) **Q:** 6:30. 0630, that's the morning of  
(25) May 22nd entered the safety fairway?

Page 139

(1) **M. Kowalewski**  
(2) **A:** Yes.  
(3) **Q:** Now, when did you finally exit,  
(4) finally exit the safety fairway? Is that  
(5) somewhere close to New York Harbor? Ambrose?  
(6) **A:** When anchoring, when anchoring near  
(7) the Ambrose, we were not exercising any more  
(8) safety fairway.  
(9) **Q:** Between Ambrose and your entry of  
(10) 0630, did the NORASIA ALYA leave the safety  
(11) fairway at all?  
(12) **A:** When required for the safety of  
(13) navigation.  
(14) **Q:** Then the answer is "yes," you did  
(15) leave the safety fairway at some point between  
(16) 0630 on the 22nd and anchoring at Ambrose?  
(17) **A:** I don't understand the question.  
(18) **Q:** I didn't understand your answer.  
(19) You said to me "yes" for the safety  
(20) of navigation. All I'm trying to find out by that  
(21) yes, did you mean at some point between 0630 and  
(22) anchoring at Ambrose that the NORASIA ALYA did  
(23) leave the safety fairway?  
(24) **A:** Still I don't understand the  
(25) question.



MACIEJ KOWALEWSKI  
September 12, 2007

MICHAEL STEPSKI v.  
THE M/V NORASIA ALYA

Page 140

*M. Kowalewski*

(1) Q: You got all the —  
(2) A: Yes, I know all the records.  
(3) Q: Does the record show the course of  
(4) the NORASIA ALYA between 0630 and Ambrose?  
(5) A: Yes.  
(6) Q: Now, does the record also show the  
(7) safety fairway?  
(8) A: Yes.  
(9) Q: Does that record show the course of  
(10) the NORASIA ALYA inside the safety fairway?  
(11) A: Yes.  
(12) Q: Does it show that the NORASIA ALYA  
(13) went out of the safety fairway at any point?  
(14) A: Yes.  
(15) Q: All right. That's what I'm asking  
(16) you.  
(17) Would you now either on — some way,  
(18) some intelligent way, tell us all here the time  
(19) and the coordinates when the NORASIA ALYA left the  
(20) safety fairway?  
(21) A: I must take a look at this.  
(22) Q: Oh, yes. Yes. I want you to be  
(23) exact.  
(24) (Pause.)  
(25)

Page 141

*M. Kowalewski*

(1) MR. WIEGEL: Do you want to —  
(2) MR. HEALEY: When we finish  
(3) this little bit to keep it going and  
(4) then we'll sit down.  
(5) A: I will quote the timings now.  
(6) Q: Go ahead now. Go ahead, Captain,  
(7) please.  
(8) A: 1400.  
(9) 1300.  
(10) 1240.  
(11) 1238.  
(12) 1100 navigating on the boundary.  
(13) Q: What's that?  
(14) A: 1100 navigating. Navigating on the  
(15) boundary.  
(16) Q: Just explain that, navigating on or  
(17) off?  
(18) MR. WIEGEL: On the boundary.  
(19) A: That means can be on or off.  
(20) Q: I don't understand. You have to  
(21) explain when you say navigating on the boundary.  
(22) A: From my documentation.  
(23) Q: Hang on a minute. You can explain  
(24) it to me. I didn't make this clear.  
(25)

Page 142

*M. Kowalewski*

(1) This safety fairway runs generally  
(2) east and west?  
(3) A: Yes.  
(4) Q: So the boundaries are north and  
(5) south?  
(6) A: Yes.  
(7) Q: And now you say operating at 1100 on  
(8) the boundary, you're talking about north or south  
(9) boundary?  
(10) A: Yes, I'm talking about the north  
(11) boundary.  
(12) Q: Just stick with me, I'm not trying  
(13) to mislead you.  
(14) When you say "on the boundary," that  
(15) can be right on the line or close to it. Is that  
(16) what you're saying, on the boundary?  
(17) A: Can be inside, can be outside, or  
(18) can be on the line.  
(19) Q: I got you.  
(20) A: From my documentation, I cannot  
(21) answer precisely if this — this time the vessel  
(22) was outside of the line.  
(23) Q: You made it clear.  
(24) MR. HEALEY: Do you understand  
(25)

Page 143

*M. Kowalewski*

(1) that?  
(2) MR. GARGAN: Absolutely.  
(3) Q: I understand you, Captain, you made  
(4) it clear.  
(5) Your documentation shows the NORASIA  
(6) ALYA at 11:00 is so close to the northern boundary  
(7) that you cannot honestly say it's on the line,  
(8) it's north, or it's south; is that what you're  
(9) telling me?  
(10) A: This is what I see.  
(11) Q: I accept that. Okay. Go ahead now.  
(12) Let me stop you there.  
(13) When you're telling me 11:00 may be  
(14) on the boundary, there hadn't been some kind of a  
(15) course change or anything to come out of there, it  
(16) was just a normal movement of the ship that it had  
(17) moved up a little; is that it?  
(18) Did you intentionally go on the line  
(19) at 11:00?  
(20) A: I don't understand the question.  
(21) Q: At 11:00, did you intentionally  
(22) alter the course of the NORASIA ALYA to go right  
(23) on the north boundary?  
(24) A: I don't understand your question.  
(25)

Page 144

Page 146

*M. Kowalewski*

*M. Kowalewski*

(1) Q: What don't you understand and then  
(2) we'll talk about it.  
(3) A: May I gave the explanation?  
(4) MR. WIEGEL: Sure. Go ahead.  
(5) Q: Sure.  
(6) A: There can be two reasons; the vessel  
(7) is on the boundary, anticollision action and  
(8) uncontrolled drift taken into consideration that  
(9) is the safe to follow it.  
(10) Q: All right.  
(11) A: However, general — general course  
(12) was as per sailing plan. That was navigation of  
(13) the sailing plan.  
(14) Q: By the way, the sailing plan, that's  
(15) a check off list that —  
(16) A: No.  
(17) Q: Presailing plan?  
(18) Did you have a — I'll find it.  
(19) A: I don't have a sailing plan.  
(20) Q: Wait a minute.  
(21) You got a sail plan so we know what  
(22) you're talking about?  
(23) A: Passage plan, sailing plan.  
(24) Q: Whatever it is, you have it?

(1) So this was not an instant — as  
(2) best you can reconstruct, this was not an incident  
(3) to avoid a collision, this was correcting a  
(4) course?  
(5) A: This was visible on the screen shot.  
(6) Q: All right. And you corrected the  
(7) drift because you wanted to stay in the safety  
(8) fairway, correct?  
(9) A: Yes.  
(10) Q: It is good seamanship to stay in the  
(11) safety fairway westbound into New York if there is  
(12) no great danger; isn't that right?  
(13) A: Recommended by Code of Federal  
(14) Regulations 33.  
(15) Q: All right. It's recommended by the  
(16) Code of Federal Regulations, and that  
(17) recommendation encoded in the federal regulations,  
(18) that's a statement of good seamanship; isn't it?  
(19) A: The same as we were quoting the  
(20) STSW95.  
(21) Q: We're not arguing, we're saying the  
(22) thing same. That's good seamanship?  
(23) A: Yes, of course.  
(24) Q: To be drifting, moving in on out of

Page 145

Page 147

*M. Kowalewski*

*M. Kowalewski*

(1) A: No, I don't have this.  
(2) MR. WIEGEL: This?  
(3) MR. HEALEY: That's what I was  
(4) looking for. This is exactly what I  
(5) was talking about.  
(6) Q: At 11:00, go back to that. You told  
(7) me that there can be various reasons, see, the  
(8) course of the ship; safety to avoid collision,  
(9) drift.  
(10) Is there anything that you can  
(11) remember at 11:00? Was there something taken to  
(12) avoid collision, or was it just drift? Did you  
(13) just have to correct the course? What is it,  
(14) Captain?  
(15) A: What I can see from my records, it  
(16) is correcting because the vector over the ground  
(17) and the vector — I mean, the headline, they are  
(18) slightly different, and I can see it from this  
(19) ECDIS that it was correcting of the course. That  
(20) means the vessel was drifted to the north, and to  
(21) maintain the safety fairway from this, what we can  
(22) see from the headlight and the overground vector,  
(23) action taken in correcting of the course.  
(24) Q: Understand. I understand.

(1) the safety lane is poor seamanship if you have no  
(2) reason?  
(3) A: I don't understand your question.  
(4) Q: If you don't stay in the safety  
(5) freeway —  
(6) A: Fairway.  
(7) Q: Thank you.  
(8) If you don't stay in the safety  
(9) fairway, simply because you're not paying  
(10) attention, that's poor seamanship?  
(11) A: I don't understand your question.  
(12) Q: All right, fine, you don't  
(13) understand it.  
(14) MR. WIEGEL: Captain, what  
(15) don't you understand about his  
(16) question?  
(17) THE WITNESS: Because it has  
(18) nothing to do with the seamanship.  
(19) They are two navigation  
(20) schools, I mean method of navigation.  
(21) Active and passive are accepting of  
(22) the drift. The passive accepting of  
(23) the drift is as well one of the  
(24) navigation methods.

MACIEJ KOWALEWSKI

September 12, 2007

MICHAEL STEPSKI v.  
THE M/V NORASIA ALYA

Page 148

(1) *M. Kowalewski*  
 (2) Q: Well now it's my turn to tell you I  
 (3) don't understand what you're talking about. So  
 (4) try my question.  
 (5) A: Okay. May I?  
 (6) Q: No, no, no, try my question.  
 (7) A: Okay.  
 (8) Q: All I'm asking, if a navigator, a  
 (9) master mariner, a captain like yourself is using  
 (10) the east/west safety fairway, and because of no  
 (11) impending danger or drift he just decides to go  
 (12) north out of the freeway, would you say that is  
 (13) not the best seamanship?  
 (14) I'm trying to get, aren't you  
 (15) supposed to stay in the freeway?  
 (16) MR. WIEGEL: Fairway.  
 (17) Q: Aren't you supposed to stay in the  
 (18) fairway?  
 (19) You just quoted, you named the US  
 (20) Code.  
 (21) A: Actually, it's very hard for me to  
 (22) answer that question.  
 (23) Q: Why. Tell me why?  
 (24) A: I can give an explanation.  
 (25) Q: Don't be looking at your attorney,

Page 149

(1) *M. Kowalewski*  
 (2) just tell me why and I will try to help you.  
 (3) What's so hard about the question as to whether or  
 (4) not a mariner should stay —  
 (5) A: Because passive navigation has  
 (6) nothing to do with the prudent navigation.  
 (7) Q: Is it prudent to go outside of a  
 (8) safety fairway if there is no reason to do it?  
 (9) A: Yes.  
 (10) Q: It is good to do that?  
 (11) A: Yes. There's nothing wrong in it.  
 (12) Q: Okay.  
 (13) And from 11:00, which you just noted  
 (14) on there as on the line, the north line, okay,  
 (15) moving ahead from 11:00, that's 1100 or 11 a.m. in  
 (16) the morning, moving ahead, don't go backward,  
 (17) moving ahead toward say 1239, tell me between 1100  
 (18) and 12 — let's even it out, 1240, NORASIA ALYA  
 (19) goes over the northern boundaries of this  
 (20) east/west safety fairway?  
 (21) A: So maybe you —  
 (22) Q: Why would you, Captain, you're  
 (23) saying 11:00 you were looking there and you told  
 (24) us we already explained the drift to the north  
 (25) extent of the safety fairway.

Page 150

(1) *M. Kowalewski*  
 (2) And I just asked you, go through  
 (3) your records between 11:00 and say 1245 —  
 (4) A: Yes.  
 (5) Q: — and tell me each time that shows  
 (6) the vessel left the fairway?  
 (7) A: Okay. So from 11:00 —  
 (8) Q: Yes. Yes. Going ahead.  
 (9) A: 11:00 as we discussed —  
 (10) Q: Yes, that's done.  
 (11) A: — passive course control. Drifting  
 (12) corrected.  
 (13) Q: That's 11?  
 (14) A: 11.  
 (15) Q: I got you.  
 (16) Now, did you go outside the fairway  
 (17) again?  
 (18) A: 1131 inside safety fairway  
 (19) controlling the course.  
 (20) Q: Now, you ought to tell me — I know  
 (21) I'm interrupting — identify these records?  
 (22) A: Yeah, because it is —  
 (23) Q: Captain, tell us what these records  
 (24) are so we will know. What are these records  
 (25) you're looking at? What are they?

Page 151

(1) *M. Kowalewski*  
 (2) A: Screen shots.  
 (3) Q: Of?  
 (4) MR. WIEGEL: Of what?  
 (5) A: The ECDIS.  
 (6) Q: E-C-D-I-S?  
 (7) A: Yes, correct.  
 (8) Q: Okay. Keep going.  
 (9) A: 12:00, maintaining the course,  
 (10) because it is well visible, the headline and the  
 (11) overground vector inline.  
 (12) 1238, beginning of the overtaking  
 (13) maneuver of the target spotted on the radar.  
 (14) Q: All right now, I think I've  
 (15) understood you correctly.  
 (16) At 11:00, and you've already fully  
 (17) explained it may be a drift, you're on the  
 (18) northern line.  
 (19) Between 11:00 and 1238, NORASIA ALYA  
 (20) has stayed in this fairway, right?  
 (21) A: Correct.  
 (22) Q: Okay.  
 (23) A: This is what the records are  
 (24) showing.  
 (25) Q: I know.



Page 152

*M. Kowalewski*

(1) Well, the records you've said it's  
 (2) the printout from —  
 (3) A: ECDIS screen shots.  
 (4) Q: Yes, and it's usually pretty  
 (5) accurate, right?  
 (6) A: Yes.  
 (7) Q: You're relying on that, you're  
 (8) looking at a record. As a matter of fact, the  
 (9) record shows you a visual picture?  
 (10) A: Yes. Yes.  
 (11) Q: So what you're telling us, you're  
 (12) not making up, you're looking at sophisticated  
 (13) electronic records from your ship?  
 (14) What I'm saying, this is not some  
 (15) stupid pencil mark, this is hi-tech records from  
 (16) the NORASIA ALYA?  
 (17) A: Yes.  
 (18) Q: And as far as you know, they can be  
 (19) relied upon?  
 (20) A: Yes.  
 (21) Q: That's all I'm saying.  
 (22) So those records that you're looking  
 (23) at and are reliable, show NORASIA ALYA stays in  
 (24) the safety fairway pretty much until a maneuver is  
 (25)

Page 153

*M. Kowalewski*

(1) undertaken at 1238?  
 (2) A: Yes.  
 (3) MR. HEALEY: And now we can  
 (4) stop for lunch.  
 (5) MR. WIEGEL: I'm going to ask  
 (6) him at lunch he look at more detailed  
 (7) ECDIS printout so he can make sure he  
 (8) has given you the most accurate answer  
 (9) that he gave you.  
 (10) MR. HEALEY: Well, all right,  
 (11) show us what you showed him later.  
 (12)  
 (13) (Luncheon recess: 12:45 p.m.)  
 (14)  
 (15)  
 (16)  
 (17)  
 (18)  
 (19)  
 (20)  
 (21)  
 (22)  
 (23)  
 (24)  
 (25)

Page 154

## AFTERNOON SESSION

(1) (1:25 p.m.)  
 (2) (Whereupon, Document, was  
 (3) marked as Kowalewski Exhibit 13 for  
 (4) identification, as of this date.)  
 (5) MACIEJ KOWALEWSKI, Resumed  
 (6) testifying as follows:  
 (7) EXAMINATION (CONTINUED)  
 (8) BY MR. HEALEY:  
 (9) Q: I think I remember — but as you  
 (10) know my age — what we were talking about is  
 (11) the — at about 1230 — no, not 1230 — the course  
 (12) of the vessel NORASIA ALYA in the fairway on  
 (13) May 22nd, '04, right? That's the setting.  
 (14) Now, to try to get something going,  
 (15) it was at — and I think you've looked at the log,  
 (16) but you look at this any time you want.  
 (17) I'm looking at page 3 of Logbook II,  
 (18) which is the entry for 22 May, and it notes in  
 (19) there, and we already referred to this, Captain,  
 (20) at 0430, the second officer during the watch was  
 (21) facing restricted visible, range below 0.1NM.  
 (22) Nautical files is NM, Captain?  
 (23) A: Yes.  
 (24)  
 (25)

Page 155

*M. Kowalewski*

(1) Q: He ignored master's orders and not  
 (2) informed master. All right. Okay.  
 (3) And I think we just touched on that.  
 (4) We don't have to go into great detail. But that  
 (5) was an important rule when you had restricted  
 (6) visibility that they would alert, correct, the  
 (7) master?  
 (8) A: It was my standing order.  
 (9) Q: And I say it was an important one of  
 (10) your standing orders?  
 (11) A: Very important.  
 (12) Q: Because at restricted visibility,  
 (13) the master has to be able to make certain  
 (14) decisions to make sure everything is safe, right?  
 (15) A: Correct.  
 (16) Q: And you wanted to be on the bridge  
 (17) so you could carry out your duties, right?  
 (18) A: Yes.  
 (19) Q: Okay. So that's the reason why you  
 (20) considered it seriously and made this log entry?  
 (21) A: Serious fog.  
 (22) Q: Correct.  
 (23) Now, I don't know if — when you —  
 (24) at about 0430 when you were informed, did you go  
 (25)

MACIEJ KOWALEWSKI  
September 12, 2007

MICHAEL STEPSKI v.  
THE M/V NORASIA ALYA

Page 156

*M. Kowalewski*

[1] to the bridge?  
[2] There is a note here, I don't want  
[3] to mislead you, it says visibility restricted. I  
[4] don't know what time that it says, and it says  
[5] master on the bridge.  
[6] Do you see this in the small print  
[7] down there?  
[8] A: Yes.  
[9] Q: What time did you go to the bridge?  
[10] A: 4:30.  
[11] Q: And just bear with me. Here it is.  
[12] Now, the logbook shows that at some  
[13] period there had been lookouts posted, right?  
[14] A: Yes.  
[15] Q: Again, I'm referring to the logbook,  
[16] and you tell me, it looks like sometime between  
[17] 0000 — this is — we're talking about this one  
[18] page, page 3 — there's a notation, there's a name  
[19] over there for AB.  
[20] Do you see it? It looks like  
[21] Filitas (phonetic)?  
[22] A: Filitas.  
[23] Q: That's the lookout.  
[24] A: Yes.

Page 157

*M. Kowalewski*

[1] Q: AB Filitas?  
[2] A: Able bodied.  
[3] Q: And so during that period of time,  
[4] he was the only lookout?  
[5] A: Yes.  
[6] Q: Where was he posted; do you know? I  
[7] know you weren't on the bridge, don't guess. Do  
[8] you know where?  
[9] A: Most probably port side wing and  
[10] port side part of the bridge.  
[11] Q: All right. I understand that.  
[12] And what we're talking about is the  
[13] bridge, the ship's housing at the rear of the  
[14] NORASIA ALYA, right?  
[15] A: Yes.  
[16] Q: Now right below that, take a look,  
[17] again, I'm just trying to find out about lookouts.  
[18] There's another name written in there, D/C it  
[19] looks like, I can't pronounce it, Volkshiner?  
[20] A: Voelchner. German name.  
[21] Q: Okay. And D/C, what does that stand  
[22] for?  
[23] A: Deck cadet.  
[24] Q: And was he — he was the lookout at

Page 158

*M. Kowalewski*

[1] that period?  
[2] A: Yes.  
[3] Q: And is it correct he too would be  
[4] posted back there on the bridge wing?  
[5] A: Port side wing outside of the  
[6] wheelhouse and port side wheelhouse. I believe  
[7] they were watching in this place.  
[8] Well, in the moment when I one on  
[9] the bridge, definitely he was watching port side  
[10] wing. Actually, cannot watch anything because the  
[11] visibility was around 80, 90 meters. He was  
[12] hearing signals.  
[13] Q: Well, is it correct, there are  
[14] provisions in these rules of the world, SOLAS, as  
[15] for lookouts, correct?  
[16] A: Well, actually —  
[17] MR. WIEGEL: Note my  
[18] objection.  
[19] A: — STSW95.  
[20] Q: Pardon me?  
[21] Well, there are provisions —  
[22] A: Yes.  
[23] Q: — governing. All right.  
[24] Because while we're talking about

Page 159

*M. Kowalewski*

[1] lookouts, I think you already touched on this, but  
[2] a lookout —  
[3] A: Let me go to my documentation.  
[4] Q: You can look at that, look at the  
[5] front of your logbook where this information is  
[6] printed up at times.  
[7] Every vessel — listen to me,  
[8] Captain, I'm quoting this lookout rule. Every  
[9] vessel shall at all times maintain a proper  
[10] lookout by sight and hearing.  
[11] Is that your understanding?  
[12] A: Of course.  
[13] Q: Okay. It says "at all times";  
[14] doesn't it? I just read the rule.  
[15] A: All the time.  
[16] Q: So you're supposed to have a lookout  
[17] at all times, because not only can he see,  
[18] visibility is low, he can hear? You have to have  
[19] a guy out there to do both; don't you?  
[20] A: No.  
[21] Q: You have one man who can do both?  
[22] You have to have somebody who is able to see and  
[23] hear; isn't that correct?  
[24] Explain to me —

Page 160

*M. Kowalewski*

- (1) A: No.  
 (2) Q: All right.  
 (3) A: Shall I explain?  
 (4) Q: Yes, of course.  
 (5) A: Okay.  
 (6) Convention STSW95 says, "The  
 (7) environment of night vision or other impediment to  
 (8) keeping the proper lookout, the officer in charge  
 (9) of the navigation watch may be the sole lookout in  
 (10) daylight provided that on each such occasion," and  
 (11) then — I mean, I make a reference only —  
 (12) Q: I understand you. You made the  
 (13) reference and that's fine.  
 (14) A: That officer on watch at day time  
 (15) may be considered as sufficient lookout.  
 (16) Q: What was the visibility at day time  
 (17) on 22 May on board the NORASIA ALYA?  
 (18) You just said something —  
 (19) A: Visibility was varied from  
 (20) 0.1 nautical miles to 90 meters and clearing up  
 (21) time to time up to the three miles. Three  
 (22) nautical miles.  
 (23) Q: Now, just to proceed on this line.  
 (24) At 0430, you came up on the bridge, right?  
 (25)

Page 161

*M. Kowalewski*

- (1) A: Yes.  
 (2) Q: You were aware that there's  
 (3) restricted visibility, which you've described it  
 (4) in many ways, but I think in the logbook it was  
 (5) something like what; 0.4 nautical miles?  
 (6) A: 0.1.  
 (7) Q: 0.1.  
 (8) A: Eighty meters, 90 meters.  
 (9) Q: I was just going to ask you, that's  
 (10) about — that's consistent with — when you said  
 (11) 80, 90 meters, 0.1 nautical miles, are they about  
 (12) the same?  
 (13) A: Generally saying, 0.1. But time to  
 (14) time you can't even see crane No. 3.  
 (15) Q: Got worse.  
 (16) A: Yes, but afternoon we can say is 0.1  
 (17) in patches.  
 (18) Q: Okay. All right.  
 (19) Now, at this point when you came on  
 (20) deck, on the bridge —  
 (21) A: Yes.  
 (22) Q: — all right, given those conditions  
 (23) that you just told us about, visibility  
 (24) conditions, what was the speed of the NORASIA  
 (25)

Page 162

*M. Kowalewski*

- (1) ALYA?  
 (2) A: Twenty-two knots.  
 (3) Q: All right.  
 (4) A: About.  
 (5) Q: Okay. Twenty-two knots.  
 (6) And at that point, according to the  
 (7) log, sometimes shortly after 0430, there was no  
 (8) lookout? The deck cadet was no longer the  
 (9) lookout, right?  
 (10) A: Yes.  
 (11) Q: Take a look. Was anybody else  
 (12) assigned specifically to act as lookout?  
 (13) A: The configuration of, let's say, the  
 (14) duties assignment in the moment when I come on the  
 (15) bridge and I given the first order change, I  
 (16) became in charge.  
 (17) Q: Of course. Of course. Master's on  
 (18) the bridge, the master's in charge.  
 (19) A: So that means I was performing the  
 (20) duties designated to officer on watch who is the  
 (21) representative only of the master when the master  
 (22) is not on the bridge, and automatically the  
 (23) officer who was on the bridge was performing  
 (24) duties required for a safety of the navigation by  
 (25)

Page 163

*M. Kowalewski*

- (1) the lookout and listening to the fog signals.  
 (2) Q: I got you. I think I got you.  
 (3) You, the master, came on the bridge,  
 (4) correct?  
 (5) A: Correct.  
 (6) Q: So you now are the man and it was  
 (7) you who took over these duties, including lookout;  
 (8) is that right?  
 (9) MR. WIEGEL: Note my  
 (10) objection.  
 (11) A: No. No.  
 (12) Q: All right, who — when you were on  
 (13) the deck at 0430, who else was on the bridge?  
 (14) A: I don't understand the question. I  
 (15) was not on the deck, the bridge.  
 (16) Q: We'll do it again.  
 (17) At 0430, there's an entry here,  
 (18) "Restricted visibility, master on the bridge."  
 (19) What does that mean, "the master on  
 (20) the bridge"?  
 (21) A: That means master's in charge.  
 (22) Q: It means that you were physically on  
 (23) the bridge?  
 (24) A: When the master is on the bridge —  
 (25)



MACIEJ KOWALEWSKI

September 12, 2007

MICHAEL STEPSKI v.  
THE M/V NORASIA ALYA

Page 164

[1] *M. Kowalewski*  
 [2] Q: Wait, wait. This entry, master on  
 [3] the bridge, does that mean that you, Captain  
 [4] Kowalewski, had proceeded physically up to the  
 [5] bridge?  
 [6] A: Yes.  
 [7] Q: Okay, that puts you there.  
 [8] A: Yes.  
 [9] Q: And I want to know, at that point  
 [10] what other members of the crew of the NORASIA ALYA  
 [11] were on the bridge?  
 [12] A: At that moment when I come, it was  
 [13] the Cadet Voelchner, Piotr Grabsztuowicz, chief  
 [14] officer.  
 [15] Q: You have the deck cadet and the  
 [16] chief officer.  
 [17] Were there just three of you?  
 [18] A: Three.  
 [19] Q: I want to be exact. There was three  
 [20] of you.  
 [21] And is it correct at some point the  
 [22] deck cadet who was acting as lookout was excused?  
 [23] A: Yes.  
 [24] Q: Okay. What time was that?  
 [25] A: I don't remember.

Page 165

[1] *M. Kowalewski*  
 [2] Q: You excused him because you were in  
 [3] charge up there?  
 [4] A: Well, after discussion with the  
 [5] chief officer arranging the duties, we decided  
 [6] both, but I don't remember the particulars.  
 [7] Q: All right. But between you and the  
 [8] chief officer it was decided — wait a minute, let  
 [9] me just get. If we take one and move aside.  
 [10] Between you and the chief officer,  
 [11] sometime after 4:30, looking around you decided we  
 [12] will take the deck cadet off as lookout, he could  
 [13] leave, right?  
 [14] A: You asked me very particular  
 [15] question which I cannot answer because I don't  
 [16] remember this. What was the —  
 [17] Q: We're just talking.  
 [18] A: What was the subject of  
 [19] conversation. But definitely there were three men  
 [20] on the bridge.  
 [21] Q: I'm not asking you conversation.  
 [22] You have to stick with me. Now, I didn't ask you  
 [23] the conversation, anything.  
 [24] And I'll tell you one thing, I'll  
 [25] make a statement. If you think I'm trying to

Page 166

[1] *M. Kowalewski*  
 [2] trick you, you're wrong. I'm trying to find out  
 [3] what took place and you're the man there.  
 [4] Can you answer the questions?  
 [5] MR. WIEGEL: Mr. Healey, he's  
 [6] trying to answer.  
 [7] MR. HEALEY: He doesn't have  
 [8] to be defensive.  
 [9] Q: Now look, Captain, at 0430 you  
 [10] physically came up on the bridge and you told  
 [11] me — now, is this correct — you told me at that  
 [12] point there were three of you, you, the captain,  
 [13] the chief officer, and the deck cadet, correct?  
 [14] A: Yes.  
 [15] Q: I'm not asking about conversations,  
 [16] but at some point after 4:30 between you and the  
 [17] chief officer, it was decided that the deck cadet  
 [18] was relieved; is that correct? He left the  
 [19] bridge?  
 [20] A: Well, actually, I don't remember the  
 [21] facts to confirm this. How this happened, who  
 [22] decided.  
 [23] Q: I didn't ask you who decided, I  
 [24] simply said that the fact of the matter is that at  
 [25] 4:30 there were three of you there, deck cadet,

Page 167

[1] *M. Kowalewski*  
 [2] you the master, chief officer. At some point you  
 [3] and the chief officer — I'm not asking who made  
 [4] the decision —  
 [5] A: It was approved by me and by my  
 [6] orders.  
 [7] Q: That's all I'm saying. And so  
 [8] whoever did it, you approved it and the deck cadet  
 [9] left.  
 [10] A: Yes.  
 [11] Q: So, from sometime, and we don't know  
 [12] the exact time, sometime after 0430 when you came  
 [13] up there, until let's say 1300, the people on the  
 [14] bridge, the sea watch, was the master, and the  
 [15] chief officer, and nobody else?  
 [16] A: Talk back, relying on amplified fog  
 [17] signal from the —  
 [18] Q: I don't understand you, Captain.  
 [19] MR. WIEGEL: He'll explain.  
 [20] Q: And you said, talk back, hearing the  
 [21] fog signal?  
 [22] A: May I give the explanation?  
 [23] Q: I want you to because I don't know  
 [24] what you're saying.  
 [25] A: The vessel NORASIA ALYA is

Page 168

*M. Kowalewski*

[1] classified as Nav O, having classification in the  
[2] class certificate.  
[3]  
[4] When the owner is constructing the  
[5] vessel to get such a notation, it is required to  
[6] fulfill requirements of the SOLAS conventions —  
[7] excuse me I — wrongly I said — to fulfill the  
[8] requirements of the class in connection with the  
[9] SOLAS convention.

[10] Therefore, for that particular case,  
[11] must be installed forward station, aft station,  
[12] near the pilot ladder's station, meaning the  
[13] station is the possibility of the hearing of the  
[14] events, so-called elephant ears.  
[15] As the vessel is 200 meters long,  
[16] when we are on the bridge, we can hear the signal  
[17] fog signal of the other vessel about 1.5 cable  
[18] less that is required by regulations because the  
[19] regulations they say that emitted fog signal, the  
[20] other vessels can hear, depends from the side of  
[21] the vessel, from 0.5 to 2 nautical miles. So in  
[22] case we don't have such a system, our — according  
[23] to regulations, our ability is reduced about 1.5  
[24] cable.

[25] MR. HEALEY: Now I'm going to

Page 169

*M. Kowalewski*

[1] move to strike everything he said.  
[2] Q: What was the question I asked you?  
[3] MR. WIEGEL: That's what he's  
[4] trying to tell you that.  
[5] MR. HEALEY: I didn't ask you  
[6] the question.  
[7] MR. WIEGEL: He's trying —  
[8] MR. HEALEY: He is not  
[9] answering the question.  
[10] Q: Before that, the first question was:  
[11] Is it correct after you discharged — whoever made  
[12] the decision, you approved it — the deck cadet  
[13] from the 0430 until 1300. The question I gave  
[14] you:  
[15] Is it correct that the composition  
[16] of the sea watch on the bridge was the master, and  
[17] the chief officer, and the officer on watch, two  
[18] guys?  
[19] A: Yes.  
[20] Q: All right. That's — I didn't ask  
[21] you about elephant ears or anything else. All I  
[22] want to get from you, stick with me and we'll  
[23] move.  
[24] About 0430 to at least 1300, on

Page 170

*M. Kowalewski*

[1] 22 May, the sea watch would be yourself, and the  
[2] officers on duty, right?  
[3] A: On watch.  
[4] Q: Pardon me, on watch?  
[5] A: Correct.  
[6] Q: There was nobody else on the bridge?  
[7] A: No.  
[8] Q: Was this vessel on automatic pilot?  
[9] A: Yes.  
[10] Q: All right.  
[11] Now, you had stated at some point  
[12] that the sea watch would be the master and the  
[13] officer on watch, and your words were, except for  
[14] meals and toilet.  
[15] So were there times that there will  
[16] be maybe one man on the bridge?  
[17] A: When I go to the toilet —  
[18] Q: Wait a minute, half a minute.  
[19] A: Actually, I can say — different  
[20] answer.  
[21] It was not such a time from 0430  
[22] 'til 12:00, even going to the toilet, that the  
[23] bridge was not attended, because the other system  
[24] was active.  
[25]

Page 171

*M. Kowalewski*

[1] Q: Wait a minute.  
[2] At this point, Captain, just so you  
[3] know, these questions that I'm asking you, I'm  
[4] trying to find out the human beings. You can tell  
[5] me all about all of this machinery later.  
[6] All I'm trying to find out, is what  
[7] human beings, what sailors of the NORASIA ALYA  
[8] were active on the bridge?  
[9] And am I correct what you're telling  
[10] me is, from 0430 on 'til 1300, there were only two  
[11] men who might be on the bridge?  
[12] A: All the time on the bridge.  
[13] Q: That's right.  
[14] And you did say, and I'm not saying  
[15] that anybody left and took a sleep. I'm saying at  
[16] some point you might be down to one, if one of  
[17] fellows had to go to the bathroom or went down to  
[18] grab a coffee or a bite to eat; is that correct?  
[19] A: Yes.  
[20] Q: It turned out you had some kind of  
[21] machine connected to fog horn.  
[22] Do you have a fog horn on board?  
[23] Listen to me. Do you have a fog  
[24] horn on the NORASIA ALYA that you could sound?  
[25]

MACIEJ KOWALEWSKI  
September 12, 2007

MICHAEL STEPSKI v.  
THE M/V NORASIA ALYA

Page 172

(1) *M. Kowalewski*  
(2) A: The vessel has two whistles,  
(3) typhoons.  
(4) Q: You have ---  
(5) A: Electromagnetic typhoons.  
(6) Q: This is to make a noise so other  
(7) ships know you're around, is that right, if you're  
(8) in fog?  
(9) A: Yes.  
(10) Q: Whatever you call it, whistle or  
(11) anything.  
(12) You had a device that would send out  
(13) a sound?  
(14) A: Yes.  
(15) Q: So that in fog, if you can't see,  
(16) somebody might hear, right?  
(17) A: Correct.  
(18) Q: Okay. All right.  
(19) Now, again, I'm going to move now  
(20) between 1200, 12 noon, and if I remember, 1400,  
(21) two in the afternoon on 22 May.  
(22) At that point, were you still  
(23) involved in this fog, as you described it? Are  
(24) you still in heavy fog?  
(25) A: Yes.

Page 173

(1) *M. Kowalewski*  
(2) MR. WIEGEL: Object to form.  
(3) Q: Vision was bad?  
(4) A: Yes.  
(5) Q: Vision was very poor? You said  
(6) sometimes you couldn't even see the forward  
(7) cranes, right?  
(8) A: Not the forward crane, the crane  
(9) No. 3, which is the most aft crane.  
(10) Q: That's closest to you?  
(11) A: Yeah.  
(12) Q: And from the 12 to 2 in the  
(13) afternoon, see, you've got that ship going  
(14) 22 knots or thereabouts, right?  
(15) A: Yes.  
(16) Q: And from 12 to 2 you had no seaman  
(17) acting as a lookout?  
(18) A: No.  
(19) Q: You had no seamen on the bridge as  
(20) the able bodied and the deck cadet had been doing  
(21) earlier?  
(22) A: We are talking about the lookout or  
(23) the seaman?  
(24) Q: I said you had no seamen acting as a  
(25) lookout. I'm talking about the lookout. You had

Page 174

(1) *M. Kowalewski*  
(2) nobody acting as a human lookout from 12 to 2; is  
(3) that correct?  
(4) A: No.  
(5) Q: Who was the lookout?  
(6) A: Officer on watch.  
(7) Q: Okay. So aside --- you say the  
(8) officer on watch was your lookout.  
(9) There was nobody else, correct?  
(10) A: No.  
(11) Q: Okay.  
(12) And now you have some kind of radar  
(13) hook up on board the NORASIA ALYA; don't you?  
(14) A: I don't understand.  
(15) Q: Radar, you have radar on that ship?  
(16) A: Yes, we have two radars; one is the  
(17) 3 centimeters radar, and the other is  
(18) 10 centimeter radar.  
(19) Q: Now, the officer on deck was acting  
(20) as your lookout.  
(21) Did you have anybody assigned to  
(22) monitor and plot targets on your radar?  
(23) A: Yes.  
(24) Q: Who?  
(25) A: Automatic acquisition zones and

Page 175

(1) *M. Kowalewski*  
(2) myself.  
(3) Q: Automatic --- what did you say? Give  
(4) me that again.  
(5) A: Automatic acquisition zones and  
(6) myself.  
(7) Q: Automatic acquisition zones.  
(8) Does that give you a printout, a  
(9) record?  
(10) A: Sorry?  
(11) Q: Does that system, automatic system  
(12) that you just described, print out a record like  
(13) these various plottings that you've shown us?  
(14) A: From automatic acquisition zone,  
(15) targets, which they are plotted on the S-band  
(16) radio --- radar, they are displayed on the ECDIS.  
(17) Q: Okay. I got that.  
(18) What I'm saying is, they would be  
(19) displayed on the screen like we're sitting here in  
(20) front of the ECDIS?  
(21) A: Yes.  
(22) Q: Does that system have the  
(23) capabilities of giving you a printout of those  
(24) targets that are on the system?  
(25) A: We can get the printout from the



Page 176

*M. Kowalewski*

- [1] ECDIS and we can see on the documentation what we
- [2] have this.
- [3] Q: All right. I'm getting it.
- [4] Then you do have, at least the
- [5] capability exists in that system, to get a
- [6] printout of the targets that were — that were
- [7] being shown on the system; is that right?
- [8] A: No, I don't understand the question.
- [9] Q: Well, you did say — you used the
- [10] term these radar systems when on making a sweep
- [11] will show targets.
- [12] A: Excuse me, I can give you small
- [13] explanation.
- [14] Q: Yes.
- [15] A: Maybe your question is if from the
- [16] automatic acquisition zone I will get the
- [17] information about the risk of the collision?
- [18] Q: No, that's not my question.
- [19] A: Then I don't understand.
- [20] Q: Okay. Good.
- [21] We were simply talking about your
- [22] radar system.
- [23] A: Yes.
- [24] Q: And all I — and just general terms,

Page 177

*M. Kowalewski*

- [1] I'm not talking about — right now about, you
- [2] know, what you did, okay, on the 22nd of May, that
- [3] radar system is made so that through electronics,
- [4] it sends out a signal, the signal returns, and it
- [5] shows up as a target on a screen on the bridge; is
- [6] that right?
- [7] A: Yes. On the radar and on the ECDIS.
- [8] Q: All right. All I'm asking you is:
- [9] At some point on the radar and the
- [10] ECDIS, there are targets showing you ships in the
- [11] area?
- [12] A: My ship?
- [13] Q: Showing other ships in the area.
- [14] A: Yes.
- [15] Q: All right.
- [16] So there is something visual in
- [17] front of you, a screen where you can see the
- [18] targets, right?
- [19] A: Yes.
- [20] Q: Those pictures that appear on the
- [21] screen, on your system, are they preserved? Do
- [22] you still have them?
- [23] A: Yes.
- [24] Q: Where are the pictures of what was

Page 178

*M. Kowalewski*

- [1] showing up on the?
- [2] A: The clean shots ECDIS.
- [3] Q: Get me one to just show me what
- [4] we're looking at.
- [5] A: (Witness proffering.)
- [6] MR. WIEGEL: What time?
- [7] MR. HEALEY: I'm getting that.
- [8] I'm looking.
- [9] MR. WIEGEL: Up on the upper
- [10] right-hand corner.
- [11] MR. HEALEY: It says "1228,
- [12] 5/22/04".
- [13] We're now referring to this
- [14] page again, at 12 — the time 1228.
- [15] MR. WIEGEL: It has a Bates
- [16] number on it, too; doesn't it? Okay.
- [17] Q: On that piece of paper in front of
- [18] you, can you show me the target for the — that
- [19] the radar is showing?
- [20] A: This one (indicating).
- [21] Q: Let me —
- [22] MR. WIEGEL: Just for the
- [23] record, the Captain is referring to
- [24] document which is Bates stamped

Page 179

*M. Kowalewski*

- [1] NORASIA 0198.
- [2] Q: All right.
- [3] Now, did you have somebody aside
- [4] this radar who was plotting the movement of other
- [5] ships?
- [6] A: Myself.
- [7] Q: Okay.
- [8] And how did you do that?
- [9] A: I do this in three ways.
- [10] Q: No, no, that day. Or did you use
- [11] three systems?
- [12] MR. WIEGEL: He's telling you.
- [13] A: Three ways.
- [14] Q: And this day you had three ways?
- [15] A: Yes.
- [16] Q: Okay, tell me.
- [17] A: Automatic target acquisition zones.
- [18] Manual plotting. Trails. And then another one,
- [19] method, AIS detection. But not all the ships they
- [20] have AIS.
- [21] Those ships that have the AIS, they
- [22] were automatically popping up with the AIS
- [23] information. Those ships which doesn't have the
- [24] AIS, they will pick it up by acquisition zones or